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P R O C E E D I N G S

1:08 p.m.

CHAIRMAN McDADE: We are here on the record in the matter of Entergy Nuclear Operations, Indian Point Nuclear Generating Units 1 and 2. It's Docket No. 50-0247-LR and 50-286-LR. We're here for a telephone status conference and scheduling conference.

What I would ask if for the parties who are present and I will go through each of the participants to identify themselves for the record.

Also, when you do speak during the course of this conference, I would ask that you identify yourself by name to make sure that the court report is able to properly identify the individual who has spoken to attribute the statement to the right party.

First of all, from the NRC staff, who is present?

MR. TURK: Your Honor, this is Sherwin Turk. I'm with the Office of the General Counsel. I'm joined by Brian Harris, my co-counsel and Brian Newell, paralegal in our office.

Also with me are two members of the staff. I'll turn to them if we need to. And Andrew Stuyvenberg is on the phone from a distant location.

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1 CHAIRMAN McDADE: Representing Entergy
2 from Morgan Lewis.

3 MR. BESSETTE: Your Honor, this is Paul
4 Bessette from Morgan Lewis. Joining me is Kathryn
5 Sutton, Martin O'Neill and then we have William Dennis
6 from Entergy.

7 CHAIRMAN McDADE: From Riverkeeper?

8 MS. BRANCATO: Your Honor, this is Deborah
9 Brancato from Riverkeeper. And I'm here with Phillip
10 Musegaas.

11 CHAIRMAN McDADE: From Clearwater?

12 MR. GOULD: Your Honor, you have Board
13 Member Ross Gould and another line manager green
14 manager director.

15 CHAIRMAN McDADE: From the State of New
16 York.

17 MR. SIPOS: Good afternoon, Judge McDade.
18 This is John Sipos, S-I-P-O-S. And with me in Albany
19 is Susan von Reusner and Susan Taylor, who colleagues
20 of mine who will be listening in as well.

21 I believe we may have Mr. Anthony Roisman
22 on the line as well. And we may also have Joan Leary
23 Matthews from the New York State Department of
24 Environmental Conversation on a separate line also.

25 MS. MATTHEWS: Yes, I'm on the line.

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1 CHAIRMAN McDADE: Okay, thank you. From
2 the State of Connecticut

3 MR. SNOOK: Yes, Your Honor. Attorney
4 General Robert Snook for the State of Connecticut.

5 CHAIRMAN McDADE: From the Town of
6 Cortlandt?

7 MS. STEINBERG: Your Honor, this is
8 Jessica Steinberg for the Town of Cortlandt.

9 CHAIRMAN McDADE: Do we have anyone from
10 Westchester County? Apparently not.

11 Anyone from the Village of Buchanan?
12 Apparently not.

13 And we have counsel for the New York City
14 Economic Development Corporation? Apparently not.

15 Let's get started. Item No. 1 we have, as
16 I understand it the last was had as far as a projected
17 date where the publication of the Environmental Impact
18 Statement in this case is May 31st.

19 Mr. Turk, does that remain the current
20 estimate?

21 MR. TURK: No, Your Honor. The staff has
22 been working on putting out the Final EIS, but has
23 determined that due to the number of -- the very large
24 number of comments that have been received on the
25 draft that more time will be required before the FEIS

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1 can come out.

2 We're currently looking at an extension of
3 several months on that.

4 CHAIRMAN McDADE: Okay, can you narrow it
5 down. Does several months mean three? Does it mean
6 12?

7 MR. TURK: It's on the order of three,
8 Your Honor. I think three would probably be a very
9 good estimate.

10 CHAIRMAN McDADE: Okay. What we're going
11 to do is not necessarily establish any hard and fast
12 dates here today, but to go through some general
13 scheduling issues. All of those scheduling issues are
14 going to sort of have a jump off date of the issuance
15 of the Environmental Impact Statement. I think we can
16 get an idea of scheduling in any event.

17 First of all, before we get into specific
18 scheduling, are there any issues that any party has
19 with regard to the Section 2.236 mandatory
20 disclosures? Are there any issues that need to be
21 addressed by the Board with regard to those mandatory
22 disclosures?

23 MR. GOULD: Your Honor, this is Ross Gould
24 from Clearwater. We just had a question. We're
25 trying to work something out between the parties but

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1 just if there was to a Motion to Compel that would be
2 required, how would that factor into your scheduling?

3 CHAIRMAN McDADE: Well, given what Mr.
4 Tuck said with regard to the delay in the issuance of
5 the Environmental Impact Statement, it probably
6 wouldn't. What we would urge you to do is to try to
7 work out any issues as quickly as possible and file
8 the Motion to Compel as quickly as possible. We don't
9 want to put a specific deadline on filing a motion
10 because the hope is that you will be able to work it
11 out. If it appears that you are not able to work it
12 out, then file a motion once you've reached that
13 conclusion.

14 MR. GOULD: And Your Honor, if I may, just
15 how much effort at working it out -- I'm looking for
16 a little guidance in how much we need to be trying,
17 how far we need to push to work things out before
18 coming to the Board in your preference?

19 CHAIRMAN McDADE: I think it's always
20 going to be easier if you can work it out. I mean
21 it's a situation where from your standpoint, talking
22 to either Mr. Kirk or Mr. Bessette is probably going
23 to be a lot quicker and easier than filing a motion
24 with us and then having it fully briefed.

25 On the other hand, if it appears that

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1 there's an impasse, there's just simply a disagreement
2 between you and a party from whom you are seeking
3 information as to whether or not that information is
4 properly within the scope of this proceeding, and you
5 can't reach a resolution, then I would urge you to
6 come to us as soon as possible.

7 MR. GOULD: Okay. Then at this point I'll
8 just leave it at that and I'll continue to work with
9 the parties and see if we can come up with a
10 resolution.

11 CHAIRMAN McDADE: The next thing that we
12 wanted to cover has to do with Motions for Summary
13 Disposition and setting a deadline for the motions for
14 summary disposition. What we want to avoid is setting
15 a situation where as people are getting ready for the
16 hearing, Motions for Summary Disposition are coming in
17 and all of the other parties and the Board are forced
18 to deal with them at the same time they're preparing
19 for the hearing, preparing -- either drafting the
20 direct testimony or reading the direct testimony,
21 depending on which participant we're talking about.

22 We would think, given the fact that
23 there's going to be somewhat of a delay in filing the
24 Environmental Impact Statement, that setting a motion
25 deadline for Motions for Summary Disposition based on

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1 any of the matters that are currently before the
2 Board, in other words not things that are going to be
3 raised in the Environmental Impact Statement would be
4 appropriate. I would think that some time probably in
5 June would be appropriate, probably the early part of
6 June.

7 From the standpoint of Entergy, do you
8 have any comments on that?

9 MR. BESSETTE: Your Honor, we have no
10 concerns with that due date, although Entergy has two
11 submissions to the NRC staff that it has planned that
12 may impact that schedule. I don't know if you want to
13 talk about them now or wait for another opportunity.

14 CHAIRMAN McDADE: Is this Mr. O'Neill
15 speaking?

16 MR. BESSETTE: This is Paul Bessette.

17 CHAIRMAN McDADE: Mr. Bessette, what are
18 those matters?

19 MR. BESSETTE: Your Honor, in response to
20 two technical contentions that have been admitted by
21 the Board, in an effort to facilitate resolution of
22 those issues, Entergy plans on making two submissions
23 in the next several months. The first one in response
24 to New York State 25, it plans on -- it is preparing
25 an aging management program associated with reactor

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1 vessel internals. That was one of the issues raised
2 that there wasn't sufficient details, so we're
3 preparing an aging management program and we hope to
4 have that submitted to the NRC staff in June.

5 Also, in response to New York State 26 and
6 26A, where there was a challenge to the fact that the
7 fatigue calculations were not submitted to the Board,
8 we have been in the process of working with the vendor
9 to prepare those calculations to submit to the NRC to
10 facilitate that issue. And we hope to have those
11 calculations into the NRC by July.

12 Because we believe we are sort of filling
13 in some blanks on those issues, we may -- we would
14 consider, perhaps, a Motion to Dismiss or Motion for
15 Summary Disposition, as appropriate, partial or full,
16 on those issues.

17 So with respect to any other safety
18 contentions, Your Honor, the June date is perfectly
19 acceptable, but because these two submissions would
20 not have been entirely completed by then, we would
21 seek a bit of leeway on those two.

22 CHAIRMAN McDADE: Mr. Turk, am I correct
23 that September, early September would be at this point
24 the earliest estimate for the issuance of the
25 Environmental Impact Statement?

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1 MR. TURK: I would think that the latter
2 part of August is a possibility, Your Honor.

3 CHAIRMAN McDADE: Okay, after these are
4 submitted to the NRC, having to do with New York 25
5 and 26, I assume the position would be that you would
6 view that those submissions would render the ending
7 contentions moot and would then file a Motion for
8 Summary Disposition. How much time would you need?
9 Would 30 days after the date that those are submitted
10 be sufficient for filing a Motion for Summary
11 Disposition?

12 MR. BESSETTE: Yes, Your Honor. We
13 believe that would be sufficient.

14 CHAIRMAN McDADE: Okay, because what I
15 want to do is to make those dates come in so that New
16 York would have an opportunity to read them and
17 respond to them before the Environmental Impact
18 Statement issues so that they would not be trying to
19 respond to those Motions for Summary Disposition at
20 the same time they're trying to analyze the
21 Environmental Impact Statement and make a
22 determination as to whether or not any new or amended
23 contentions are appropriate. So taking that into
24 consideration, we will try to set a schedule that will
25 take that into consideration and meet those concerns.

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1 MR. SIPOS: Thank you, Your Honor. This
2 is John Sipos for New York State.

3 CHAIRMAN McDADE: Okay, now after the
4 Environmental Impact Statement is filed, the next
5 issue would be filing motions for -- to file new or
6 amended contentions.

7 From the standpoint of first of all the
8 Intervenors, I will just sort of go through those.
9 How much time do you think would be needed? New York?

10 MR. SIPOS: Judge, this is Assistant
11 Attorney General John Sipos. I would think 30 days
12 would be as close as we could cut it. It sounds like
13 the staff is doing fairly extensive additional work on
14 the FEIS. Obviously, no one can predict how that will
15 come out. But given -- in light of that, I would
16 suggest 30 days.

17 CHAIRMAN McDADE: From the standpoint of
18 Riverkeeper, do you think that would be adequate?

19 MS. BRANCATO: Yes, Your Honor. We agree
20 with New York.

21 CHAIRMAN McDADE: Clearwater?

22 MR. GOULD: Your Honor, this is Ross
23 Gould. Thirty days would be the shortest time period.
24 As you know, we have very little amount of resources
25 as a small public interest group.

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1 CHAIRMAN McDADE: Okay. Connecticut?

2 MR. SNOOK: This is Bob Snook for
3 Connecticut. Yes, we can work with 30 days.

4 CHAIRMAN McDADE: And Cortlandt?

5 MS. STEINBERG: This is Jessica Steinberg.
6 Thirty days would be sufficient.

7 CHAIRMAN McDADE: If we then went after
8 that, would 20 days for reply, 10 days for response,
9 then probably 30 days for the Board to rule on the
10 admissibility of any new or amended contentions, would
11 then be looking at a period of time after that for the
12 filing of the Statement of Position of the parties.

13 And the first question that I would ask of
14 the staff is it your view of the Statements of
15 Position should be filed together or seriatim. In
16 other words, we have the Intervenors, they're the ones
17 who have brought the various contentions. Should they
18 be filing their Statements of Position first, to then
19 be responded to by the Applicant and then the staff?

20 What's the staff's position on that?

21 MR. TURK: That's an interesting question
22 that I have not considered until now. I don't have a
23 position on that yet, Your Honor.

24 CHAIRMAN McDADE: Does Entergy?

25 MR. BESSETTE: Your Honor, we would prefer

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1 simultaneously filings.

2 CHAIRMAN McDADE: Okay, it seems like
3 actually having it seriatim would give you the benefit
4 of being able to respond to what the State's position
5 is. I don't see there would be any harm to the State
6 by having them filed simultaneously.

7 What's New York's position on that?

8 MR. SIPOS: I guess along with Mr. Turk,
9 I hadn't considered that. This would be a staggered
10 filing, is that what Your Honor is proposing would be
11 proponent of each contention going first and then
12 essentially the respondents going second? Do I
13 understand that correctly?

14 CHAIRMAN McDADE: Except for the word
15 proposing. I'm not proposing it. I'm just raising it
16 as a possibility and asking to get the input from the
17 parties on whether or not they think that advisable or
18 whether or not they think simultaneous would be for
19 the Statement of Position would be more appropriate.

20 MR. SIPOS: And Judge, if I could ask a
21 further question and this is John Sipos again for the
22 record, would that be in any way tied the filing of
23 pre-filed testimony?

24 CHAIRMAN McDADE: Well, that's the next
25 question. And given the fact that two of the major

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1 participants in this said they really haven't thought
2 about the issue and given the fact that we have a
3 three-month delay on the issue of the Environmental
4 Impact Statement, it may be appropriate just to raise
5 it right now and then to ask you all to submit within
6 a reasonable period of time, say within ten days after
7 this status conference, what your views are on that.

8 The next had to do with the submission of
9 written direct testimony and the question is whether
10 or not the submission of written direct testimony
11 should be at the same time as the submission of the
12 Statement of Position, and again, whether the written
13 direct testimony should be done at one time or whether
14 or not it should be staggered, in other words the
15 proponent of the contentions submit their written
16 direct testimony, exhibits, along with that and then
17 to allow the party opposing the contention a period of
18 time within which to submit their testimony which
19 would inherently be in rebuttal to it.

20 The question is whether or not having
21 Entergy or the staff submit their written direct
22 testimony is helpful when they haven't seen what the
23 proponents of the contention are going to submit. It
24 may well be that they will agree with much, if not
25 all, of what the proponent says and the question do we

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1 want to have two ships passing in the night where most
2 of the direct testimony is parallel which is simply
3 have the direct testimony and the party opposing the
4 contention focus effectively being rebuttal on it.

5 So what I would ask you to do is to think
6 about that and also to give us your views with regard
7 to the amount of time that would be appropriate
8 between them, again, with the understanding that most
9 of this would already be done and it would just be a
10 question of tailoring it, based on the submissions of
11 position and the direct testimony and exhibits that
12 have already been submitted.

13 We would then need a period of time for
14 the preparation of questions for cross examination as
15 well and a question of how much time would be
16 appropriate for that in this scenario.

17 Before we move on, are there any of the
18 participants here that wish to weigh in on that at
19 this point or just simply reserve and submit something
20 in writing within the next ten days?

21 Entergy?

22 MR. BESSETTE: Your Honor, we would just
23 note that we would work with any process parties agree
24 to and I was perhaps a bit confused on the Statements
25 of Position and the written direct testimony, so we

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1 have nothing further. We'd be glad to provide our
2 comments in writing. And we'd be glad to work and
3 coordinate with the parties including the NRC on that.

4 CHAIRMAN McDADE: Okay. Mr. Turk, do you
5 have anything further?

6 MR. TURK: I do and I would just note that
7 typically the way that I prepare a Statement of
8 Position is really as we develop the direct testimony.
9 We'll then take highlights from the testimony and make
10 that the Statement of Position. So I think it's
11 helpful, for us and for all parties to do a
12 simultaneous filing of our Statement of Position and
13 direct testimony. A different question as to whether
14 the parties should file in staggered fashion or
15 simultaneously.

16 And now that we've talked a little bit, I
17 tend to favor the idea of the Intervenor files first,
18 so that all parties know what they have to address.
19 And if that's agreeable to everyone else, I think
20 that's the way to go.

21 MR. SIPOS: Judge, this is John Sipos for
22 the State. I wonder if another alternative, putting
23 aside for the moment the issue of staggered versus
24 simultaneous filing of testimony, would be to consider
25 having the Statement of Position be filed some time

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1 after the testimony so that it could perhaps be more
2 of a synthesis and perhaps more useful for all
3 concerned, sort of the opposite or the opposite
4 sequence of what was initially quoted by Your Honor.

5 CHAIRMAN McDADE: Well, let me just sort
6 of raise some something and speaking from my own
7 standpoint, part of it is what's going to be most
8 useful to the Board. I know from my standpoint
9 reading the Statement of Position tends to put into
10 focus the written direct testimony. Instead of
11 getting it piece by piece, you're able to sort of get
12 an overview in the submission of the Statement of
13 Position and then read through the direct testimony.

14 Again, we're not going to be deciding
15 anything here today. I just throw that out to allow
16 you all to address that, say within ten days as we get
17 ready. And actually, I sit here and say ten days.
18 Why don't we make it 14 since I'm not going to be here
19 or is Judge Wardwell next week. So you might as well
20 take a full 14 days since we're not going to be here
21 to read it until the end of the following week in any
22 event.

23 MR. BESSETTE: Your Honor, this is Paul
24 Bessette. I don't know if it's appropriate to raise
25 it at this point, but it's really responding to your

1 question No. 7, but due to the number of contentions
2 and the delay in the issuance of the FSEIS, we were
3 wondering if it would be appropriate if we could raise
4 the issue of perhaps going to hearing on several of
5 the safety contentions earlier rather than going into
6 one hearing on 13 contentions.

7 I think the issues, Your Honor, is raising
8 that it will be a challenge for all the parties under
9 any normal circumstances for a hearing of this
10 duration. And I think there are certain safety
11 contentions that really there's nothing further being
12 done. There's no filings. The SER is out and I was
13 just wondering if the Board would be open to having a
14 -- starting part of the hearing earlier rather than
15 kicking it off based on the FSEIS.

16 CHAIRMAN McDADE: Well, at an earlier
17 status conference, the Board raised that as a
18 possibility as to whether or not the safety and
19 environmental contentions, that part of the hearing,
20 could be bifurcated. At that point, it was the view
21 of the parties it seemed like a consensus that that
22 would not be appropriate, that it would be -- make it
23 more difficult rather than less difficult to do that.

24 What I would suggest though is within that
25 14-day period of time, if there are specific

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1 contentions that you believe would be appropriate to
2 go forward with prior to the issuance of the
3 Environmental Impact Statement, if you could identify
4 those and then we could leave a period of time, say
5 another 14 days for anyone else to respond to see
6 whether or not they believe that would be helpful or
7 otherwise.

8 MR. BESSETTE: Thank you, Your Honor.

9 CHAIRMAN McDADE: Okay, the next thing
10 that we wanted to raise -- if you could hold on for
11 just a moment. I want to confer.

12 (Whereupon, the above-entitled matter went
13 off the record at 1:31 p.m. and resumed at 1:34 p.m.)

14 CHAIRMAN McDADE: This is Judge McDade
15 again. There was one other thing I wanted to raise
16 and that had to do with establishing a deadline for
17 any motions to proceed pursuant to subpart G as
18 opposed to subpart L.

19 That being the case, it seems like it
20 would necessarily come after the receipt of the
21 written direct testimony until the parties know who
22 the other parties' witnesses are going to be. It
23 would seem to be difficult for raising that kind of a
24 motion and just to seek input on how much time after
25 the submission of the written direct testimony would

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1 be appropriate to file that kind of a motion.

2 What I'd like to raise at this point is
3 just to sort of go back on something that we've said
4 a little bit ago. We had talked about submitting
5 various things in writing, then 14 days of today, and
6 just sort of run through and for you all to be
7 thinking about this. What I don't want to do is just
8 create busy work and having people write things out
9 just for the sake of writing things out. And the
10 question is whether or not it would make more sense
11 instead of doing this by written submissions of just
12 simply setting another telephone conference and having
13 you express your positions orally.

14 What I'm trying to do is one, allow you
15 the opportunity to have the input, the same point, not
16 force to do things that are going to just simply take
17 up more time than otherwise.

18 Mr. Turk, do you have a view as to whether
19 or not it would be better to do this in writing or
20 just simply to have another telephone status
21 conference? What's the view of the staff?

22 MR. TURK: I think the parties should try
23 to talk among themselves and see if we can work out a
24 common approach and maybe file a status report with
25 the Board perhaps a week from now and let you know

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1 whether we feel we can reach agreement or not. And
2 maybe at that point go to a telephone conference call
3 to resolve any disagreements.

4 CHAIRMAN McDADE: Well, I mean part of
5 that, even if the parties agree among themselves, it
6 isn't necessarily true that the Board is going to
7 agree with the same time schedule. Certainly, if
8 there were joint submission and joint recommendations
9 that would go a long way to convincing us to acquiesce
10 in those proposals, but it wouldn't necessarily be
11 simply rubber stamped either.

12 At this point in time, again, the question
13 -- what I don't want to do is just have you spend a
14 lot of time writing things out if it could be handled
15 orally quicker. Based on what Mr. Turk just said,
16 what it may be is if you all could get together and
17 among yourselves decide, get back to us within a week
18 just to simply let us know and perhaps have the NRC
19 staff act as the spokesperson as to whether or not
20 there is a consensus. If people want to do something
21 in writing, we're certainly not going to say no, don't
22 do it in writing, but at the same period of time if
23 there's a consensus that it could be handled just as
24 well, more efficiently, orally in another status
25 conference, we would be willing to entertain that as

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1 well.

2 Mr. Bessette, what's the view of Entergy
3 on that?

4 MR. BESSETTE: We would certainly concur
5 with that, Your Honor. And I just want to make sure
6 I'm clear. We're talking about a proposed schedule
7 basically working from the EIS and based on your
8 milestones for new contentions. It's after a Board
9 ruling on any new contentions and working its way
10 through hearing, proposed schedule milestones. Is
11 that correct?

12 CHAIRMAN McDADE: Yes. And then also the
13 issue that you raise as to whether or not there are
14 any of the contentions currently pending that it would
15 be appropriate to bifurcate, in other words, to try to
16 schedule a hearing on those contentions prior to the
17 time that the Environmental Impact Statement is issued
18 so that we could resolve those rather than waiting
19 until then. Again, when we raised it last time, there
20 seemed to be a consensus against that. If that
21 consensus is changed and again, entertain -- we don't
22 necessarily need a consensus, but willing to entertain
23 the views of all of the participants. It may well be
24 that Entergy feels that's appropriate, but New York,
25 Connecticut, Clearwater, Riverkeeper don't. So it's

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1 just an opportunity to hear from the parties.

2 And again, the issue is at this point
3 whether or not you all would feel more comfortable
4 just doing it orally or whether or not you'd feel more
5 comfortable submitting something in writing to the
6 Board. And the suggestion, as I understood it from
7 Mr. Turk was to let you all think about it and get
8 back to us in a week and at that point in time if you
9 wanted us to schedule another telephone status
10 conference, we would then go about setting that
11 telephone status conference. If not, just to go ahead
12 and issue whatever you had in writing in a two-week
13 period of time.

14 MR. SIPOS: Judge, this is John Sipos from
15 the State of New York. We're certainly not opposed to
16 New York talking things out and seeing if we can reach
17 consensus. I'm a little concerned that over the next
18 seven days that that just given the intricacies of my
19 schedule over that time that that may not be enough.
20 I think sometimes it's helpful for the parties to
21 think about positions that have been expressed in
22 these conferences with NRC and Entergy.

23 I'm just unavailable next Monday through
24 a previous commitment. I'm wondering if it might be
25 possible to have until the 4th or the 5th to see if we

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1 can work things out amongst the parties.

2 CHAIRMAN McDADE: At this point it's a
3 relatively simple question. It's just do you want to
4 do this in writing or do you want to do it orally?
5 And --

6 MR. SIPOS: I'm sorry, Judge.

7 MR. TURK: Your Honor, this is Sherwin
8 Turk.

9 CHAIRMAN McDADE: Yes.

10 MR. TURK: I think it's a great idea that
11 the parties talk amongst themselves. Maybe we can
12 come up with a joint written proposal. But I would
13 say at this point may be it's better that we just
14 submit in writing, jointly, if possible, otherwise
15 separately. And then based on that you could
16 determine whether there's a need for a conference call
17 or what the issues should be to address in that
18 conference call.

19 I would go with your original suggestion
20 which is approximately in two weeks, by May 3rd, the
21 parties submit either jointly or separately their
22 positions.

23 CHAIRMAN McDADE: Does that work for New
24 York?

25 MR. SIPOS: I think the 4th would be more

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1 helpful, Judge.

2 CHAIRMAN McDADE: And again, given the
3 fact that the Environmental Impact Statement is
4 delayed a bit, a day or so one way or the other isn't
5 going to make any difference. Certainly, the
6 difference between the 3rd and the 4th of May at this
7 point is de minimis. At least from our standpoint I
8 can understand from your scheduling standpoint that it
9 may not be.

10 Mr. Bessette?

11 MR. BESSETTE: Either day is fine with us,
12 Your Honor.

13 CHAIRMAN McDADE: Okay. From Riverkeeper,
14 any views on this?

15 MS. BRANCATO: We would be amenable to the
16 written submissions, Your Honor. This is Deborah
17 Brancato.

18 CHAIRMAN McDADE: Okay, and from
19 Clearwater?

20 MR. GOULD: This is Ross Gould, Your
21 Honor. The written submission is good with us.

22 CHAIRMAN McDADE: And Cortlandt?

23 MS. STEINBERG: This is Jessica Steinberg,
24 Your Honor, the written submission is fine with us.

25 CHAIRMAN McDADE: And Connecticut?

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1 MR. SNOOK: This is Bob Snook for
2 Connecticut. We can work with the written submission
3 as well.

4 CHAIRMAN McDADE: Have I missed anybody?

5 MR. TURK: Your Honor, this is Sherwin
6 Turk.

7 CHAIRMAN McDADE: Yes.

8 MR. TURK: In terms of the parties
9 conferring, I would suggest that the only parties that
10 need to confer are those who have lead responsibility
11 for prosecuting or defending on a contention. So that
12 would be New York State, Riverkeeper, Clearwater,
13 Entergy, and the staff.

14 I don't believe Connecticut or Cortlandt
15 or others have any lead responsibility on litigation
16 on the contention. So I would ask whoever is involved
17 with as lead on a contention on the Intervenors' side
18 that they coordinate with any other Intervenors or
19 state governments that may have an interest.

20 I don't think it will be as easy to work
21 with a larger number of participants, especially if
22 they don't have lead responsibility.

23 CHAIRMAN McDADE: I mean we're not talking
24 about that many additional people and I think probably
25 they are going to tend to defer to the parties that

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1 have been more involved, but at this point in time I'm
2 not going to exclude any of the other entities,
3 Connecticut, Cortlandt from this. Again, they can
4 simply say that whatever you guys work out is fine or
5 they can have an opportunity to put in -- I mean all
6 they initially have to say is look, we'd rather do
7 this orally. If you're going to do it as a joint
8 submission, in writing, this is what we would like to
9 have in. If it turns out that's not the consensus of
10 the other participants, then they can add that as an
11 addendum.

12 I'm willing to get their input. They may,
13 given the issues that we have, may or may not wish to
14 chime in, but I'm not going to exclude them from it at
15 this point in time. And we'll use the date of May
16 4th.

17 What I would like to do at this point in
18 time --

19 ADMIN. JUDGE WARDWELL: Excuse me, this is
20 Judge Wardwell. Would everyone clarify what we're
21 getting on May 4th because I'm getting a little
22 confused here.

23 As I understood what I heard, is that
24 parties are going to talk among themselves as
25 convenient or as logistics allow and then on May 4th

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1 there are going to be written submissions on a
2 suggested scheduling order talking about the various
3 items we just have postponed discussion of. Is that
4 a fair assessment of what I just heard?

5 CHAIRMAN McDADE: And this is Judge
6 McDade. In addition to that, any input with regard to
7 potential contentions that could be taken care of
8 prior to the issuance of the Environmental Impact
9 Statement.

10 ADMIN. JUDGE WARDWELL: Yes.

11 CHAIRMAN McDADE: That's your
12 understanding Mr. Turk?

13 MR. TURK: Yes, Your Honor.

14 CHAIRMAN McDADE: Mr. Bessette?

15 MR. BESSETTE: Yes, Your Honor.

16 CHAIRMAN McDADE: Mr. Sipos?

17 MR. SIPOS: Yes, just with reference to
18 the phrase "taken care of" is that for summary
19 disposition or also hearing?

20 CHAIRMAN McDADE: I mean at this point in
21 time, we had already talked about putting a deadline
22 for Motions for Summary Disposition for anything not
23 related to the Environmental Impact Statement, so if
24 we were able to move ahead for a hearing on these,
25 there probably would be no reason to have any Motions

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1 for Summary Disposition.

2 I have to go back to two that you raised.
3 I'm assuming are not ones that Entergy would be
4 looking to go ahead to on a hearing prior to the
5 Environmental Impact Statement, 25 and 26. Am I
6 correct?

7 MR. BESSETTE: Yes, Your Honor. This is
8 Paul Bessette.

9 CHAIRMAN McDADE: So we shouldn't have an
10 issue with regard to that. What we're looking for are
11 those contentions, we can move ahead to a hearing
12 expeditiously rather than waiting.

13 MR. TURK: Your Honor, this is Sherwin
14 Turk. There are a total of seven consolidated or
15 individual basic contentions. Two of them would be
16 the submit of new information that Entergy plans to
17 submit. So that leaves five. And if I can enumerate
18 them maybe that will help us go forward today
19 understanding which ones we might be able to address
20 before the FEIS comes out.

21 They are New York 5 which is the AMP for
22 buried pipes and tanks. New York 6 and 7, medium and
23 low-voltage cables, the AMP. New York 8, the
24 electrical transformers AMP. New York 24, the AMP for
25 containment structures. And Riverkeeper TC2, the AMP

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1 for components subject to full-accelerated corrosion.

2 On all five of those, the staff's work has
3 completed the SER, addresses those issues and the
4 staff would be prepared to go forward on those before
5 the FEIS issues.

6 CHAIRMAN McDADE: Okay, and --

7 MR. TURK: But, I won't say that we'd be
8 able to get to hearing on them, but if the whole
9 process of filing testimony and possibly going to
10 hearing before the FEIS comes out is a good option.
11 Maybe going to hearing shortly after the FEIS comes
12 out. We have to work out the details on the schedule.

13 CHAIRMAN McDADE: So those -- again, by
14 the 4th to get the input of all of the other
15 participants, I don't want to put you in a box at this
16 point without going back and taking a look at those
17 contentions and saying yes, we're ready to go ahead to
18 a hearing on those contentions before the
19 Environmental Impact Statement. I don't want you to
20 have to just do that off the top of your head. I do
21 appreciate, Mr. Turk, your going through those 5, 6,
22 7, 8 and 24 and then -- what was the last one by
23 Riverkeeper?

24 MR. TURK: Technical Contention 2, TC 2.

25 CHAIRMAN McDADE: Okay, thank you.

1 MR. BESSETTE: And Your Honor, this is
2 Paul Bessette. We agree that those five of the
3 potential safety issues, some or all of which would go
4 forward and again, our goal is to figure out a way to
5 facilitate this hearing so that the parties perhaps
6 can group their efforts rather than working
7 simultaneously on 14 issues.

8 CHAIRMAN McDADE: I understand.

9 MR. BESSETTE: Thank you.

10 CHAIRMAN McDADE: And then we would ask
11 again by the 4th for the other participants, New York,
12 Riverkeeper, Clearwater, Connecticut, and Cortlandt to
13 indicate to us whether or not they think that is a
14 viable option and that would then be part of our
15 schedule.

16 ADMIN. JUDGE WARDWELL: And then just so
17 I'm clear, this is Judge Wardwell again, I sometimes
18 need extra clarity, that once we receive those
19 submittals on the 4th, there would be no other
20 responses in regards to what was written on that, that
21 we will look them over and if warranted and feel
22 necessary, then we might either ask for responses or
23 get everyone on the phone to discuss some of the
24 intricacies of the various responses we get back.

25 Is that everyone's understanding?

1 MR. TURK: This is Sherwin Turk. Assuming
2 that the parties air all of their views amongst
3 themselves before we file, so that there are no
4 surprises, then I don't see why we'd have to file
5 written responses. But if there's something that is
6 unexpected and any individual parties filing them,
7 somebody might want to respond, I can't foreclose that
8 possibility. But hopefully, we'll all know each
9 others' -- all the parties will know each others'
10 positions before we make our filings on May 4th. So
11 there should not be a need to respond.

12 CHAIRMAN McDADE: Okay, at this point that
13 should basically take care of what we have with regard
14 to scheduling. There are some questions with regard
15 to the new or amended contentions filed by New York.
16 The first question that I would have to the State of
17 New York, one of the cases cited by the staff and the
18 Applicant in response to your motion was the Pilgrim
19 that was decided by the Commission on March 26, CLI
20 10-11. Specifically, on page 7, note 26 of that
21 decision, the Commission seems to indicate a view as
22 to limitations of SAMA contentions indicating there
23 that because none of -- in that case, because none of
24 the seven potentially cost-effective SAMAs bear on
25 adequately managing the effects of aging, none need to

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1 be implemented as part of the license safety renewal
2 pursuant to 10 CFR Part 54.

3 How does that decision affect -- I realize
4 this came out after you submitted your motion to have
5 a new contention. How does this affect the viability
6 of that new contention, Mr. Sipos?

7 MR. SIPOS: Yes, Judge. This is John
8 Sipos. In fact, the State believes that what the
9 Commissioners wrote in that decision on March 26th
10 further supports the State's contention. And on page
11 20 of our reply, which we filed a week ago today, we
12 made notes of that statement in note 26 on page 7 and
13 what the State notes is material in that quote is in
14 fact, that the Commissioners went beyond the language
15 that was in the FEIS that the staff prepared in the
16 Pilgrim proceeding. And the FEIS issued there had a
17 phrase and I'm paraphrasing it, but essentially it
18 said if there's a SAMA that looks at an issue that's
19 not covered by Part 54, there's no need for further
20 review.

21 And the Commission -- the language of the
22 Commission's order goes further and we believe it
23 parses it further. It talks about the safety review.
24 And the operative language is "none need to
25 implemented as part of the license renewal safety

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1 review pursuant to 10 CFR Part 54." And that phrase
2 is nowhere in the staff's FEIS.

3 Again, this issue is not squarely raised,
4 as we understand it in looking at the filings in the
5 Pilgrim case, but it is notable that the Commissioners
6 themselves added language to that and that additional
7 phrase, we think is consistent with what the
8 Commissions said in 2001, early 2001 in their decision
9 denying the petition for rulemaking by NEI and we
10 cited that also in our reply, as did Entergy cited it
11 as well in their answer to New York's proposed
12 filings.

13 And the 2001 decision by the Commissioners
14 makes it pretty clear that the Commissioners decided
15 that they would retain SAMA review or review of SAMA
16 candidates. And they seemed to have specifically
17 rejected the position that the staff and Entergy are
18 seeking to -- New York would submit -- recycle here.
19 And that's in the Federal Register, I believe it's 66
20 Federal Register 10834. This is the February 20, 2001
21 Commission ruling and we cite this to some extent on
22 page 5 of our reply.

23 We also think New York's position, as we
24 understand the Pilgrim position, in response to your
25 question is completely consistent with the GEIS and

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1 other statements that we also set forth. I don't want
2 to belabor it. If you have any more specific
3 questions I'd be happy to answer them, but actually
4 New York feels that the Pilgrim decision supports the
5 State's contentions here.

6 CHAIRMAN McDADE: Thank you. Mr. Turk,
7 for the staff, as I understand the staff's argument
8 limiting the review here to aging management, we have
9 a situation where as part of the original application,
10 there were not SAMA analysis done. It seems to be
11 that there was a requirement that a SAMA analysis be
12 done as part of this application. If the analysis
13 that you put forward is accurate, how would anyone go
14 about contesting the adequacy of the SAMA analysis
15 done on areas other than aging management? Are you
16 saying that although it was required to be done as
17 part of the application there would be no opportunity
18 to contest it?

19 MR. TURK: No, Your Honor. The rule is a
20 little bit different than what you just stated. The
21 rule is that if severe accident mitigation alternative
22 analysis was not at the operating license stage, not
23 for license renewal, but previously, then SAMAs have
24 to be considered at the license renewal stage.

25 CHAIRMAN McDADE: And that's the case

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1 here, is it not?

2 MR. TURK: And that's the case here. The
3 Applicant's Environmental Report has a SAMA analysis.
4 The staff's Draft EIS considered that analysis,
5 discussed it. The staff, during its review, found
6 some problems with the analysis. They held conference
7 calls with Entergy. Entergy came back and revised
8 their analysis. And that led to the submission of the
9 new contentions by the State.

10 The way in which a party contests the SAMA
11 is exactly as the State has done, trying to raise
12 contentions that attack or challenge the adequacy of
13 the SAMA analysis that was conducted. What's
14 significant here is that New York did not identify any
15 SAMAs which have not already been identified by
16 Entergy. The state could have, but did not say here's
17 another mitigational alternative that you failed to
18 consider that we think would be cost beneficial in a
19 favorable way, and therefore, that should be
20 considered. The State didn't raise that kind of a
21 contention.

22 CHAIRMAN McDADE: But what they have done
23 is say a number of these SAMAs are inadequate because
24 they're incomplete, that there has been an initial
25 estimate, but it has not been carried through. So at

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1 this point in time, there's insufficient data for the
2 NRC to give the hard look under NEPA and what they're
3 urging is an additional analysis needs to be done so
4 that the data will be there for the NRC to take that
5 hard look.

6 MR. TURK: But what they're --

7 CHAIRMAN McDADE: That's not limited to
8 just aging management SAMAs?

9 MR. TURK: That's correct, but there are
10 two different questions that you're combining into
11 one, Your Honor. I'd like to separate them for a
12 moment. What the State is urging is that there should
13 be a final determination and that means essentially
14 that Entergy should go out and perform an engineering
15 analysis to determine the precise cost of implementing
16 any particular SAMA, which they have already
17 identified as potentially cost beneficial.

18 The staff's position is you don't need to
19 reach the final cost assessment because you have
20 already determined that the SAMA is potentially cost
21 beneficial. Having identified that, that's all we
22 need to know. We don't need to know precisely how
23 much will it actually cost, but the precise
24 measurement of the cost and benefit.

25 There's sufficient information now to know

1 that these are potentially cost beneficial at this
2 stage.

3 ADMIN. JUDGE WARDWELL: This is Judge
4 Wardwell. Has not Entergy stated that they are
5 running more detailed cost analyses on many of the
6 contentions -- on many of these SAMAs?

7 MR. TURK: All applicants for license
8 renewal come in with the same sort of position. They
9 identify the potentially cost beneficial SAMAs. And
10 later on they determine well, is this something that
11 we really want to go forward with? Is this something
12 that's worthwhile going forward with on our own?
13 They'll continue to do engineering analyses, but we
14 don't need those in order to identify for NEPA
15 purposes what are the potentially cost beneficial
16 actions.

17 ADMIN. JUDGE WARDWELL: But did they not
18 only recommend several of the many SAMAs that were and
19 not all of those that were potentially cost beneficial
20 as requiring additional analyses?

21 The point I'm bringing up here is it
22 wasn't New York State that's requesting these
23 additional analyses. It is New York State's position,
24 as I interpret it, is it not, that all they're saying
25 is here the Applicant says they are doing more

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1 detailed ones in accordance with the Applicant's
2 tiered approach of SAMAs as getting more detailed as
3 the cost benefits come into focus. And they're
4 suggesting that that's needed for both public
5 scrutiny, but also by you people to understand the
6 degree and the magnitude of the potential/benefits in
7 comparison to the costs.

8 I don't understand why you're not
9 interested in seeing that information before you reach
10 your decision on the SAMAs.

11 MR. TURK: Your Honor, you raise a good
12 point, but there's a very good answer to it. First of
13 all, there is no legal requirement that an applicant
14 implement any SAMA, no matter how beneficial it might
15 be to impose it.

16 ADMIN. JUDGE WARDWELL: Let's separate
17 that question. We'll get to that question later.
18 Let's stay now on strictly whether or not these costs
19 are appropriate, because that will muddy the waters I
20 think. We'll get to that.

21 MR. TURK: But it's an important
22 distinction to make because once you set that question
23 aside, then you say well, what is the requirement?
24 The requirement is under NEPA, the National
25 Environmental Policy Act, that we consider what are

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1 the potential cost benefit -- to SAMAs that are
2 potentially cost beneficial and Entergy has now done
3 that and we have considered in the Draft EIS and we'll
4 further discuss it in the Final EIS. But that's
5 what's required by NEPA.

6 The reason I raised that first threshold
7 question as to whether there's any implementation
8 requirement, there is none and you come now to the
9 important point that under NEPA there is no
10 requirement that a SAMA be implemented.

11 ADMIN. JUDGE WARDWELL: Again, let me just
12 -- I've got Judge McDade ready to jump in. I want to
13 fix this point before we move on to the other one in
14 regards to whether or not you need to address any
15 SAMAs.

16 Entergy has said I still -- as I interpret
17 it, or as I paraphrase it, I still need some
18 information in regards to analyzing these cost
19 benefits, that I've not done that SAMA analysis yet.
20 I still need to fine tune that costing. And they said
21 that that's the way they approach SAMAs is by doing it
22 in a tiered approach and they're still within those
23 tiers to reach that decision in regards to whether or
24 not the degree to which it is cost beneficial.

25 It seems to me that you would want to know

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1 that before you start making any decisions in regards
2 to whether or not to even suggest implementing them.
3 It's not complete yet.

4 MR. TURK: Your Honor, that is not the
5 staff's requirement. We do not require that fine
6 tuning to the point of knowing with some sense of
7 certainty what the actual numbers will be. As long as
8 now understand what are potentially cost beneficial
9 SAMAs, what they are, and they've been identified, the
10 staff is satisfied the Commission is satisfied.

11 ADMIN. JUDGE WARDWELL: How do you know
12 that those SAMAs, that they're now saying they are
13 going to do some more analysis won't, in fact, drive
14 those benefits -- have the cost benefit ratio be so
15 high that it's just so relatively apparent that the
16 benefits far exceed the costs beyond what is now
17 currently in the analysis?

18 MR. O'NEILL: Your Honor, this is Mr.
19 O'Neill with Entergy.

20 ADMIN. JUDGE WARDWELL: Can I get to you
21 in a minute?

22 MR. O'NEILL: Sure.

23 ADMIN. JUDGE WARDWELL: Let's let the
24 staff respond.

25 MR. O'NEILL: I'm sorry, Your Honor.

1 ADMIN. JUDGE WARDWELL: And then we'll let
2 you respond.

3 How do you know that those additional
4 analyses won't, in fact, change your opinion of those
5 SAMAs if, in fact, the Applicant has taken the
6 position that they're not done with these yet?

7 What I'm saying, not for any other reason,
8 it's for the SAMA.

9 MR. TURK: Your Honor, our understanding
10 is that the way the analysis has been conducted leads
11 to bounding analyses, or at least the bounding
12 considerations of the costs and benefits. So we don't
13 believe that any SAMA that's been identified as
14 potentially cost beneficial will increase in magnitude
15 in terms of the benefits versus costs.

16 But let me also mention that the basis on
17 which the staff has considered Entergy's analysis here
18 is the same basis that we've considered more than 50
19 license renewal applications that the Commission has
20 approved to date. This is an established method of
21 analysis and determination of acceptability.

22 And in terms of what Entergy means when
23 they say they intend to do more analysis, I would turn
24 to Entergy and ask them to explain that to you.

25 ADMIN. JUDGE WARDWELL: Now may be an

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1 appropriate time to do that.

2 Mr. O'Neill?

3 MR. O'NEILL: Yes, thank you, Judge
4 Wardwell.

5 I would reiterate what Mr. Turk said. We
6 do view the SAMA implementation cost estimates that
7 were done in the application and the revise SAMA
8 analysis as being bounding or conservative,
9 conservative in the sense that they under estimate the
10 cost of implementing particular SAMAs. For instance,
11 they don't take into account the cost of replacement
12 power during an outage that might be required or
13 adjustments for inflation. So in our view, we have
14 completed the necessary cost analyses to demonstrate
15 compliance with NEPA and Part 51.

16 ADMIN. JUDGE WARDWELL: So why did you
17 include any other statements in your application?
18 It's irrelevant then if, in fact, whatever else you're
19 doing has no effect on the SAMAs.

20 MR. O'NEILL: They do to the extent they
21 would have any effect on the SAMAs, drilling down
22 further into the cost estimates could indicate that
23 the cost of implementation is potentially higher or in
24 some instances potentially lower. But I agree, as a
25 legal matter, that statement is not required to be in

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1 the EIS. There is no legal requirement that Entergy
2 must implement any of the SAMAs identified as
3 potentially cost beneficial.

4 ADMIN. JUDGE WARDWELL: I'm not talking
5 about any implementation. I'm talking about coming up
6 with the cost benefit ratio, if you will, associated
7 with this SAMA so people can then evaluate it both for
8 public scrutiny and for the staff's benefit.

9 If you are satisfied with your cost
10 numbers which a number of them you were, weren't you?
11 You didn't propose additional analyses for every one
12 of these SAMAs, did you?

13 MR. O'NEILL: No.

14 ADMIN. JUDGE WARDWELL: So there were only
15 selected ones that you did and in presenting that that
16 says to me you've not done your SAMA analysis.

17 MR. O'NEILL: Your Honor, again, we do
18 view the analysis as being complete. I think the cost
19 analysis that is done to meet Part 51, again, is a
20 fairly high-level screening conservative analysis and
21 to a large extent Entergy looked at cost estimates
22 prepared by other licensees that had been reviewed and
23 approved by the staff. And in many instances, use
24 those cost estimates or tweaked them slightly, but I
25 think it was very clear that in a number of cases, a

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1 particular SAMA would or would not be cost beneficial.
2 In some cases they did some refined estimates, taking
3 into account a number of factors that we cite on page
4 29 of our answer. That process is consistent with NEI
5 guidance in NEI 05-01.

6 And in terms of what we ultimately do with
7 the SAMAs really is a matter of, to some extent,
8 discretion. I think the Applicant or Entergy has a
9 place engineering change request processes where they
10 submit potentially beneficial costs, cost beneficial
11 SAMAs for further evaluation, say for instance, a
12 gagging device.

13 ADMIN. JUDGE WARDWELL: Can you point to
14 us and then I'll let the staff do the same thing, any
15 situation where a party or petitioner contested the
16 fact that the SAMAs weren't complete because of these
17 statements and where a ruling has come down agreeing
18 that these additional analyses were not required?

19 MR. O'NEILL: I'm not aware of any
20 specific cases, although again I point to the prior
21 proceeding in which the Commission held that a SAMA
22 would ultimately be considered under the current
23 licensing basis process.

24 ADMIN. JUDGE WARDWELL: We'll talk about
25 the implementation later. We're just trying to

1 complete the SAMA right now.

2 Mr. Turk, can you point us to any case law
3 that would support someone contesting this as I
4 interpret New York State contesting this?

5 MR. TURK: As I sit here today on the
6 telephone, I can't put my finger on anything, Your
7 Honor. I'd have to go back and check.

8 ADMIN. JUDGE WARDWELL: Thank you.

9 JUDGE LATHROP: This is Judge Lathrop. I
10 believe the staff cited the Commission that they
11 observed the determination of potential cost benefit
12 was enough and that was in the McGuire decision.

13 MR. TURK: Just one moment, Your Honor.

14 (Pause.)

15 I think, Your Honor, you point to a very
16 important decision, that is CLI 03-17 decision in
17 McGuire Catawba. We did cite at pages 25 to 26 of our
18 brief a fairly long quotation in which the Commission
19 indicated -- these are the Commission's words that
20 "our Boards do not sit to parse and fine tune EISS."
21 And they go on to talk about the need to determine --
22 to take a hard look at significant environmental
23 questions. But the point they made in the McGuire
24 decision is that the sense of having to get to
25 certainty of the cost benefit is not a requirement

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1 under NEPA.

2 CHAIRMAN McDADE: Did New York State have
3 to get to that degree of level or didn't they just say
4 all we want to have them do is what they say they're
5 going to be doing?

6 It's Entergy that brought up the need for
7 additional analysis, not New York State.

8 MR. BESSETTE: Your Honor, this is Paul
9 Bessette. Just to be clear and to emphasize what
10 Martin O'Neill said, we believe our SAMA analyses are
11 complete for the purposes of our obligations under
12 NEPA. The processes that are referred to are just an
13 internal further scoping process that is conducted at
14 the discretion of Entergy, regardless of how New York
15 attempts to clarify it or characterize.

16 We believe our SAMA analyses are complete
17 and as provided to the staff and as provided to the
18 members of the public. We believe we've done
19 sufficient. So to the extent New York is saying we
20 have further SAMA steps to do, we believe that's an
21 incorrect characterization.

22 ADMIN. JUDGE WARDWELL: Okay, thank you.

23 CHAIRMAN McDADE: As I understand, under
24 McGuire, basically what the Commission said is that
25 the NEPA analysis needed to be in sufficient detail to

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1 ensure that environmental consequences of the proposed
2 project have been fairly evaluated.

3 As I understand New York's claim is that
4 because the analysis was curtailed at a certain point,
5 that there's insufficient data at this point to fairly
6 evaluate the SAMAs.

7 Mr. Sipos, is that New York's position?

8 MR. SIPOS: That is correct, Your Honor.
9 This is John Sipos. That is correct, Judge McDade.
10 And moreover, NEI guidance and Commission guidance
11 make it clear that it is important to develop the
12 detail here and Entergy has in its December 2009 SAMA
13 re-analysis, made an admission or stipulation that
14 there is still work to be done on it.

15 CHAIRMAN McDADE: Well, the question isn't
16 whether there's still work to be done. Is it the
17 question whether or not there is currently sufficient
18 detail to fairly evaluate the SAMAs? I mean there
19 always could be more work that can be done on almost
20 anything. Isn't that true, Mr. Sipos?

21 MR. SIPOS: That is correct.

22 CHAIRMAN McDADE: Okay, from the
23 standpoint of Entergy, either Mr. O'Neill or Mr.
24 Bessette, hasn't New York raised a genuine issue of
25 fact as to whether or not there is sufficient detail.

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1 here to evaluate the SAMAs appropriately?

2 MR. BESSETTE: Well, Your Honor, that
3 could be said about anything. We believe it's not a
4 reasonable disagreement of material fact. No, we
5 believe what we provided is sufficient and consistent
6 with the Commission guidance and particularly what
7 we've been talking about in McGuire.

8 If New York State wants something further,
9 we believe it's outside of this proceeding. There are
10 other avenues for them to do that.

11 CHAIRMAN McDADE: But essentially, and
12 correct me if I'm misinterpreting what you're saying,
13 is that you have completed a SAMA analysis. Did you
14 concede that there could be more work that could be
15 done, but the work that is done to date is sufficient
16 to fairly evaluate the SAMA and that the mere fact
17 that New York is able to point to your statement that
18 you could and intend to do some additional work
19 doesn't undercut the argument that you have that there
20 is sufficient detail currently before us to fairly
21 evaluate the SAMA. Am I accurately summarizing your
22 position?

23 MR. BESSETTE: Yes, Your Honor. You're
24 completely accurate.

25 CHAIRMAN McDADE: Mr. Sipos, why is that

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1 position not valid?

2 MR. SIPOS: It's -- well, it's not valid,
3 Judge, because what they have done here is depart from
4 their own guidance, their own NEI guidance and the NRC
5 guidance. And they have curtailed the process. So
6 they are not able to complete the analysis as to
7 whether or not the mitigation candidates identified in
8 New York State 35 are cost effective and that's it.
9 They have curtailed the inquiry here.

10 CHAIRMAN McDADE: And they've curtailed it
11 at a point where it's insufficient to make a fair
12 evaluation at this point.

13 MR. SIPOS: It appears so. That's how we
14 read it. That's how we read what they have said,
15 Judge.

16 CHAIRMAN McDADE: Now -- and again, I just
17 want to make sure I'm correctly stating what New
18 York's position is. Your position is that although
19 NEPA is procedural and requires only that there is a
20 fair look taken and that there's no specific
21 implementation requirement under NEPA, that
22 nevertheless under the Administrative Procedure Act,
23 the Commission is required to act or is precluded from
24 acting arbitrarily and capriciously, that the
25 Commission has the authority to oppose license

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1 conditions which would include the implementation of
2 the SAMAs and that although there's a certain area
3 where reasonable minds could differ and the Commission
4 would have discretion as to whether or not to act,
5 there is a certain level at which it would be
6 arbitrary and capricious for the Commission not to
7 require as a license condition the implementation of
8 certain SAMAs where the cost benefit analysis is such
9 that it's necessary to protect the public health.

10 Is that the gist of the New York argument
11 on implementation?

12 MR. SIPOS: Yes, it is, Judge. We think
13 it's quite clear. I mean Indian Point is facility
14 that is quite different from the other facilities.
15 Mr. Sherwin Turk said -- he made reference to 50
16 previous matters. Given the population distribution
17 around Indian Point, New York is -- Indian Point's
18 facilities -- it's clearly different from the other
19 ones. And that population distribution and as we've
20 seen with the weather data, that can't have very
21 significant effects on cost benefit analysis.

22 And to the extent your question went to
23 Contention 36, in Contention 36, the State identified,
24 I believe, 9 contentions, 9 SAMA candidates that are
25 cost beneficial, that are cheaper to implement and

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1 will have a greater public benefit, so the benefit
2 clearly outweighs the cost and that Your Honor is
3 correct. The State does emphasize the Administrative
4 Procedure Act with respect to that as well.

5 And this whole exercise, the whole going
6 to Contention 36, New York's position is entirely
7 consistent with NEI 05-01 and internal NRC guidance
8 documents. And as we read the 1996 Statement of
9 Considerations that went with the GEIS and as we read
10 the Commission's ruling in February of 2001 on the NEI
11 petition to change the regulations under Part 51, but
12 yes, Your Honor, I believe, summarized the State's
13 position on that.

14 CHAIRMAN McDADE: Mr. Turk, from the NRC's
15 standpoint, the SAMA analysis is not just a hollow
16 exercise. There's a purpose behind it. The
17 Commission has the authority to require the
18 implementation of a SAMA as a license condition. It
19 has that authority, does it not?

20 MR. TURK: The Commission has the
21 authority to do anything that it determines is
22 necessary to do, necessary and appropriate in order to
23 protect the public health and safety. So a more
24 specific question though is is there any regulation,
25 any existing requirement which an applicant for

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1 license renewal is bound to follow in order to get
2 license renewal. Is there any implementation required
3 to get license renewal. The answer is clearly, simply
4 no.

5 CHAIRMAN McDADE: Well, New York says that
6 there is. It says under the Administrative Procedure
7 Act, that is a SAMA has been analyzed, the date is out
8 there showing that there is a clear cost benefit
9 analysis, that the Commission giving a hard look at
10 that, although given a great deal of discretion in
11 whether to require implementation or not,
12 nevertheless, there could be if there were a
13 sufficient cost benefit ratio, a requirement for the
14 Commission to require the implementation of the SAMA
15 as a license condition and that the failure to do that
16 would constitute an arbitrary and capricious action on
17 the part of the Commission, that the Commission has a
18 duty, when appropriate, not just the ability to, but
19 has the duty, when appropriate, to mandate the
20 implementation of a SAMA.

21 Do you disagree and if so, why?

22 MR. TURK: There is no existing legal
23 requirement that a SAMA be implemented. That is a
24 very simple truth. The Administrative Procedure
25 Act requires that the Agency have a rational basis

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1 for its decision. There is no --

2 CHAIRMAN McDADE: What's the basis for
3 this decision?

4 MR. TURK: For the license renewal
5 decision.

6 CHAIRMAN McDADE: Yes.

7 MR. TURK: There is no requirement that
8 would be violated that the Commission would be remiss
9 in not implementing. Were it to say okay, we now have
10 -- we now know what the SAMAs are. We now have a good
11 enough understanding of what the SAMAs, we can go
12 forward. There is simply nothing --

13 CHAIRMAN McDADE: This is Judge McDade
14 again. If that analysis, and I'm not saying -- I'm
15 talking hypothetically right now, not looking at any
16 of the particular SAMA analyses that are currently as
17 part of the motion, just talking hypothetically.

18 If there were a situation where there was
19 a clear benefit, a minimal cost, a very significant
20 benefit, and the Commission did not require, went
21 ahead and issued a license renewal, issued a license,
22 without taking that into consideration, without
23 demanding that the Applicant use that action that for
24 very small cost could significant reduce risk,
25 wouldn't the Commission in order to justify that have

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1 to demonstrate a rational basis? Wouldn't the
2 Commission have to demonstrate that issuing the
3 license without that condition was not arbitrary and
4 capricious? Isn't that a legal hook for New York to
5 hang this contention on?

6 MR. TURK: Your Honor, you have to
7 understand the place of SAMA. I'm sure Your Honor
8 does understand it, but let me make the point for the
9 record.

10 We have to be clear on what is a SAMA to
11 begin with. The SAMA is an assessment of mitigation
12 alternatives in the event of a severe accident. The
13 accident, to begin with, is a very unlikely event.
14 Typically, we'll refer to severe accidents as beyond
15 the design basis. The entire approach of the
16 Commission in licensing a nuclear power plant and
17 Indian Point is licensed, is to say what are the
18 design basis accidents that must be considered? What
19 are those accidents that are credible enough, whether
20 the standard is one in a million per year or whatever
21 the precise standard is. I believe that is what it
22 is. But what is the likelihood of an accident
23 occurring?

24 If it's likely enough to occur, i.e.,
25 within one to a million change, one in a million

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1 chance per year, then it has to be designed so that it
2 won't occur. So what we're talking about here are
3 accidents that are unlikely to begin with. And what
4 we're considering is all right, you're now in the
5 design basis accident space. Are there any things
6 that we can do in order to ameliorate the consequences
7 of this very unlikely event? There is no requirement
8 that a SAMA be implemented.

9 If a SAMA is identified that is
10 particularly favorable from a cost beneficial
11 standpoint, then the Commission would consider that
12 not just for license renewal, but also for the
13 existing operator license. The Commission might then
14 decide to impose through a backfit requirement, i.e.,
15 so a requirement imposed after the license has already
16 been issued, after the OL was issued, the Commission
17 might decide this is too important to pass up. We are
18 going to impose this requirement by order.

19 That is not what we do on license renewal
20 space. For license renewal space, we are following
21 the directive of the Third Circuit Court of Appeal in
22 Limerick to consider the SAMAs for license renewal
23 purposes as part of our NEPA evaluation. That is what
24 we have done and that is sufficient.

25 In the Draft EIS, the staff identified the

1 SAMAs which it believes pertain to license renewal and
2 we've reached determination in the Draft EIS that
3 enough has been done in order to reach a conclusion
4 that the Applicant has adequately addressed the SAMA.
5 Upon finding a flaw in part of the inputs that the
6 Applicant used, the Applicant then came back and said
7 well here, the re-analysis fixes the problem that was
8 identified. And when we issued the FEIS we will
9 address the sufficiency of the re-analysis.

10 But for SAMA purposes, for license renewal
11 purposes, the Applicant has done enough to meet the
12 Commission's requirements. If the Commission reaches
13 a decision to issue a renewed license to the Indian
14 Point reactors, it will be on the basis that the
15 reactors are safe, that they meet the Commission's
16 safety standards and for environmental purposes, we
17 have considered the potential impact of license
18 renewal. And we will have done that even if certainty
19 has not been reached on the exact cost benefit
20 quantification that the Applicant may come up with.

21 ADMIN. JUDGE WARDWELL: This is Judge
22 Wardwell. On page 25, I believe, of your response,
23 you reference the reason for not implementing any
24 SAMAs for license renewal was because none of the
25 SAMAs relate to aging management. Is that the

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1 entirety of your rational basis for not implementing
2 any of the SAMAs?

3 MR. TURK: For license renewal purposes,
4 yes.

5 ADMIN. JUDGE WARDWELL: And what's your
6 authority for that? What regulation allows that --
7 all of the SAMAs for license renewal be categorically
8 dismissed if they don't relate to aging management?

9 MR. TURK: First of all, it's not that
10 they're dismissed, they're considered. So the EIS
11 does consider them.

12 ADMIN. JUDGE WARDWELL: What about
13 implemented?

14 MR. TURK: The basis -- there's no legal
15 requirement to require the opposite. There's no legal
16 requirement that they be implemented.

17 ADMIN. JUDGE WARDWELL: But isn't there a
18 requirement for you to provide a rational basis?

19 MR. TURK: Yes.

20 ADMIN. JUDGE WARDWELL: And isn't this by
21 only saying that they don't relate to aging management
22 issues, aren't you tying together what you say is a
23 NEPA type evaluation under our SAMA, that is Part 51,
24 254 safety issue. This isn't a safety issue. Isn't
25 that correct? That's what you were talking about.

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1 MR. TURK: The requirement to consider
2 SAMAs is an environmental requirement, not a safety
3 requirement.

4 ADMIN. JUDGE WARDWELL: Right, it's a
5 mitigation analysis, correct? It's not a safety
6 analysis.

7 MR. TURK: It's a consideration of the
8 environmental impacts of license renewal.

9 ADMIN. JUDGE WARDWELL: So how can you use
10 the fact that none of them relate to aging management
11 under a NEPA-type approach to categorically refuse to
12 implement any of them?

13 MS. SUTTON: Your Honor, this is Kathryn
14 Sutton from Entergy. If I may request to answer the
15 question?

16 ADMIN. JUDGE WARDWELL: I'd like Mr. Turk
17 to answer first and then we'll allow you to respond.

18 MR. TURK: When the Commission reaches a
19 decision on license renewal, we will look at the
20 regulations in 10 CFR Part 34 which lay out specific
21 safety standards and which require us to reach a
22 determination that all environmental considerations --
23 all environmental impacts have been considered. There
24 is no requirement that we do more, that we go on to
25 say all right, if there's something that has been

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1 identified as potentially cross beneficial in a SAMA
2 analysis, it there might becomes a requirement of
3 license renewal, that requirement simply does not
4 exist.

5 Let me give a comparison and this is
6 strictly hypothetical. If an Environmental Impact
7 Statement determines that there are aquatic impacts,
8 you can ask the same question, well, how could you
9 possibly go forward to license renewal if some fish
10 are going to be killed? Of if, for instance, if a
11 plant had a cooling tower and there was going to be
12 steam released into the air which could cause
13 aesthetic or traffic implications in a nearby area.
14 That's an environmental impact. This question would
15 be the same, how could you possibly have a rational
16 basis for licensing if you're going to have
17 environmental impact? Well, that's the wrong
18 question, because all an Applicant has to do is meet
19 the safety regulations and provide consideration of
20 environmental impacts.

21 The Commission, in turn, under the
22 Administrative Procedure Act has to follow its
23 regulations, because if it did otherwise it would be
24 irrational. There's a rulemaking process the
25 Commission has adopted regulations, both for safety

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1 and for consideration of environmental impacts. As
2 long as the Commission follows its safety regulations
3 and considers environmental impacts, it is doing what
4 it is required to do by statute and by Congress.

5 ADMIN. JUDGE WARDWELL: Where in the
6 regulations does it allow you to categorically reject
7 any SAMAs from being implemented based on them not
8 relating to aging management for license renewal? Is
9 there one?

10 MR. TURK: It depends on the trier.

11 ADMIN. JUDGE WARDWELL: Okay, and while
12 you're looking that up, I'll go to Ms. Sutton.

13 MS. SUTTON: Yes, Your Honor. While Mr.
14 Turk is looking at that, there is a statutory basis
15 for that. The scope of your NEPA analysis as defined
16 by the National Environmental Policy Act is limited to
17 the scope of a major federal action. In this case,
18 that's license renewal. The scope of license renewal
19 is clearly defined in Part 54. And it's limited to an
20 analysis of age-related degradation. It does not
21 include a re-analysis of the original design basis of
22 the plant. Its current licensing basis is protected
23 as part of that analysis.

24 ADMIN. JUDGE WARDWELL: Was a SAMA
25 conducted for that licensing basis?

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1 MS. SUTTON: The SAMA was conducted in
2 conjunction with the major federal action which is
3 license renewal. And for that reason if the
4 particular SAMA is not related to age-related
5 degradation, it falls outside the scope of this
6 particular licensing proceeding and the scope of the
7 necessary NEPA analysis.

8 ADMIN. JUDGE WARDWELL: I gather you would
9 also agree that then any environmental impacts
10 associated with NEPA, any alternative analysis would
11 have to be related to aging management then if you
12 carried the same logic?

13 MS. SUTTON: No, Your Honor. We're
14 carrying it to the identification of the cost
15 beneficial SAMA.

16 ADMIN. JUDGE WARDWELL: That is a
17 mitigation analysis. That's not a safety analysis.
18 Is that not correct?

19 MS. SUTTON: The mitigation is an
20 environmental analysis, Your Honor.

21 ADMIN. JUDGE WARDWELL: And that's what a
22 SAMA is.

23 MS. SUTTON: It's conducted under NEPA,
24 Your Honor.

25 ADMIN. JUDGE WARDWELL: Thank you.

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1 MR. TURK: Your Honor, I might be able to
2 shed a little more light. I hope I don't confuse
3 things.

4 The SAMA is an environmental assessment.
5 They're looking to see what are potentially beneficial
6 mitigating actions that you might take that are not
7 overly costly to implement.

8 If one was identified which related to
9 aging management, for instance, there may be an aging
10 management program for some sort of a component. And
11 if the SAMA says well here's a way you could improve
12 the performance of that component from which an AMP is
13 required, well the staff might then go back and say
14 well, you know, we are requiring you to have an
15 adequate AMP and we find that without this
16 improvement, the AMP is not adequate. That would be,
17 hypothetically, an aging-related determination which
18 under the safety side you would need to have a
19 modification of the AMP in order to reach a finding of
20 adequacy. But that would be the basis for finding
21 that a particular SAMA would have to be implemented,
22 but not because of environmental considerations, but
23 because on the safety side, the AMP is found to be
24 inadequate.

25 ADMIN. JUDGE WARDWELL: I wonder if a SAMA

1 analysis was conducted and it was determined that it
2 was going to cost \$1 to gain \$1 million worth of
3 environmental benefit, but yet had nothing to do with
4 aging management activities. You would still
5 categorically not require a license condition to
6 implement that SAMA because it's not related to aging
7 management?

8 MR. TURK: We would not impose that
9 requirement based on the SAMA itself. We might then
10 want to go to the regulation to determine if a backfit
11 should be required.

12 MS. SUTTON: And Your Honor, I would agree
13 with that as well.

14 MR. BESSETTE: Your Honor, this is Paul
15 Bessette. Just one point of clarification. We
16 mentioned the recent Commission decision CLI 10-11.
17 I would refer the Board to pages 37 to 38 of that
18 decision where we have to realize SAMA analysis is --
19 the Commission has already generically evaluated the
20 environmental impacts of severe accidents on all
21 plants as small.

22 So the Commission has already determined
23 that the environmental -- a severe accident itself is
24 small, so what we're talking about is alternatives,
25 mitigation alternatives of an issue that the

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1 Commission has already determined has small
2 environmental impacts for all plants including Indian
3 Point.

4 So that itself to me provides a rational
5 basis for the decision of what we're talking about.
6 The Commission has already decided, generically, that
7 the environmental impacts of severe accidents are
8 small.

9 ADMIN. JUDGE WARDWELL: Mr. Turk, can you
10 cite us any cases where you've implemented the
11 potentially cost beneficial SAMA analysis as a license
12 condition for any license?

13 MR. TURK: No, Your Honor. I'm not aware
14 of any as I sit here.

15 ADMIN. JUDGE WARDWELL: And you
16 referenced, I think, a little bit earlier in our
17 conversation that there are some other mechanisms for
18 SAMA to be implemented. Is that correct and just
19 refresh my memory on what those were?

20 MR. TURK: Yes, under 10 CFR Part 50, the
21 backfitting requirements provide a basis for the staff
22 or the Commission to determine that some regulatory
23 action is necessary to protect -- to provide adequate
24 protection for the public health and safety. Let me
25 see if I can get you the exact words. I'm looking at

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1 10 CFR 50.109 which defines backfitting as "the
2 modification of, or addition to systems, structures,
3 or components, or design of a facility where it's
4 based upon an interpretation of the Commission
5 regulations that is either new or different from a
6 previously applicable staff position." It's somewhere
7 where we've already determined the regulations are
8 met, but now we would be adding the requirement on
9 what we interpret the regulations to require until
10 then.

11 I'm looking to see specifically how we
12 would reach that decision.

13 ADMIN. JUDGE WARDWELL: Do you know if you
14 required Entergy to perform any more detailed cost
15 analyses for any potential cost beneficial SAMAs or
16 whether all of the analyses that they performed were
17 done on their own initiative.

18 MR. TURK: The analyses were done on their
19 own initiative. The staff separately did a
20 determination that there might be some additional
21 SAMAs that are appropriate, so we identified those in
22 the Draft EIS.

23 We also identified a potential flaw in
24 their analysis having to do with meteorological data.
25 Entergy looked at that, but then came back with the

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1 re-analysis where they identified further SAMAs. And
2 I think now we've reached a complete universe of
3 potentially cost beneficial SAMAs as laid out in the
4 table on page 15 of our response to the contentions
5 which lays out a listing of where the SAMA was found
6 to be potentially cost beneficial, either in the
7 Environmental Report, the Draft EIS or the re-
8 analysis.

9 ADMIN. JUDGE WARDWELL: I'm glad you
10 opened up that because I was just going to ask you a
11 question on that table on page 15 of your response
12 because mainly I want to ask some questions of the
13 State on that, but I want to clarify something that's
14 there first.

15 On the fourth column, one, two, three,
16 four, you title that "Found to be Cost Beneficial in
17 Applicant's SAMA Re-analysis." And just to make sure
18 we're talking about the same thing, that really, to be
19 precise, should be entitled "Found to be Potentially
20 Cost Beneficial." Is that correct?

21 MR. TURK: Yes.

22 ADMIN. JUDGE WARDWELL: What is the
23 significance of that potentially cost beneficial?
24 What does that mean? Why isn't it just cost
25 beneficial? Why is it potentially cost beneficial?

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1 The reason I'm getting to this is the
2 potentiality associated with oh gee, there's more
3 analysis and maybe it will become cost beneficial
4 later or is it only potentially cost beneficial
5 because it will only be cost beneficial if you
6 implement it?

7 MR. TURK: The reason why the word
8 potentially is important is going back to the guidance
9 issued by the Nuclear Energy Institute which by the
10 way the staff has endorsed in their interim staff
11 guidance document. The NEI guidance is the -- I
12 believe it's titled 05-01, NEI 05-01.

13 At page 33 of that guidance, they give the
14 following recommendation to applicants for license
15 renewal. "This analysis" -- talking about the SAMA
16 analysis -- "This analysis may not estimate all of the
17 benefits or all of the costs of a SAMA. For instance,
18 it may not consider increases or decreases in
19 maintenance of operation costs following SAMA
20 implementation. Also, it may not consider the
21 possible adverse consequences of procedure changes
22 such as additional personnel. Since the SAMA analysis
23 is not a complete engineering project cost benefit
24 analysis, the SAMAs that are cost beneficial after the
25 Phase 2 analysis and sensitivity analysis are only

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1 potentially cost beneficial." And potentially is
2 written in bold.

3 That's the final paragraph on page 33 of
4 the NEI guidance. Essentially, the reason why SAMAs
5 are labeled as potentially cost beneficial is because
6 they are assessed before a final engineering project
7 cost benefit analysis is performed. But the
8 determination that they're potentially cost beneficial
9 is following of what NEI describes as the Phase 2
10 analysis and -- what's the second term? Sensitivity
11 analysis is performed. So it's labeled potentially
12 cost beneficial until the final cost benefit
13 engineering analysis is done.

14 ADMIN. JUDGE WARDWELL: Thank you.

15 CHAIRMAN McDADE: Let me just very
16 briefly, I don't want to belabor this, but in the
17 Pilgrim decision one of the things somewhere in there
18 and I don't have it right on the tip of my tongue
19 right now as to where, but it talks about SAMA
20 analysis and it says the goal is to determine what
21 safety enhancements are cost effective to implement.
22 That, as I understand what the Commission is saying,
23 is the purpose of the SAMA analysis.

24 Once as part of the NEPA requirement, the
25 Commission reviews and makes a determination that a

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1 safety enhancement is cost effective to implement. is
2 it your position that there is no obligation on the
3 part of the Commission to, in fact, require the safety
4 enhancement to be implemented regardless of how skewed
5 that cost benefit analysis is? Is that your view, Mr.
6 Turk?

7 Again, the idea that there's no legal
8 requirement?

9 MR. TURK: That is correct. And I would
10 then point you to 10 CFR 50.109(a)(3) in which the
11 regulations provide that "the Commission shall require
12 the backfitting of a facility only when it determines
13 based on the analysis described in the regulations
14 that there's a substantial increase in the overall
15 protection of the public health and safety for the
16 common defense and security to be derived from the
17 backfit and that a direct and indirect cost of
18 implementation for that facility are justified in view
19 of this increased protection."

20 So for license renewal purposes, there is
21 no implementation requirements. The Commission can
22 consider for backfitting purposes whether a SAMA is so
23 favorable from a cost beneficial standpoint so as to
24 require a backfit under the regulation. That
25 determination of whether a backfit is required can be

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1 made by the Commission or the staff independently or
2 to be made in response to a 2206 petition filed by the
3 State or any other entity.

4 CHAIRMAN McDADE: But here we have a
5 situation where there had not been a SAMA analysis at
6 the time of the original operating license.
7 Accordingly, it was necessary to do a SAMA analysis as
8 part of the license renewal procedure.

9 MR. TURK: Correct.

10 CHAIRMAN McDADE: But it's the position of
11 the staff that if that analysis demonstrates that
12 certain safety enhancements are cost effective to
13 implement and are -- even if they are exceedingly cost
14 effective to implement, that it is not part of the
15 license renewal. It would not be a condition of the
16 license renewal that that safety enhancement be
17 implemented. Rather, it need be part of a separate
18 backfit procedure under 50.109(a)(3).

19 MR. TURK: That is correct, with the
20 exemption that if a SAMA pertained to a license
21 renewal AMP, some safety requirement for license
22 renewal, that we might then consider it under our Part
23 54 requirement for safety.

24 CHAIRMAN McDADE: Okay, now under that
25 circumstance, would there be a way for a potential

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1 intervenor to challenge the Agency's conclusions in
2 this regard? In other words, if there was a situation
3 where safety enhancement was shown as part of this
4 SAMA analysis, as part of the license renewal to be
5 exceedingly cost effective to implement, and the
6 Agency did not require it as a condition of the
7 license renewal, nor did the Agency initiate the
8 backfit procedure, would there be a way for a party
9 and interested government entity, anybody, to
10 challenge the Agency's conclusions, claiming that it
11 was not rationally based, it was arbitrary and
12 capricious. And if so, what would that vehicle be,
13 Mr. Turk?

14 MR. TURK: The proper vehicle would be a
15 petition under 10 CFR 2.206 to modify, suspend, or
16 revoke a license. And that would be the operating
17 license on the grounds that something -- the Applicant
18 is somehow not in compliance with Agency regulations
19 or because something, for instance, a backfit should
20 be required.

21 CHAIRMAN McDADE: Now why would that be --
22 assume for the sake of argument we agreed that that
23 would be a potential avenue for challenge. What would
24 that be the exclusive avenue for challenge? Is there
25 anything in the regulations that specifically

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1 precludes a party to this litigation from saying that
2 the granting of the renewal without imposing a
3 condition where a safety enhancement is identified
4 blatantly cost effective would be inappropriate, that
5 it would be arbitrary and capricious, that it wouldn't
6 be rationally based?

7 MR. TURK: The Commission has adopted a
8 set of regulations that govern its decision as to
9 whether to issuing a license at all. If an applicant
10 meets the Commission's regulations, they're entitled
11 to have the license renewed. There is no requirement
12 that a cost beneficial SAMA be implemented in order to
13 secure the license renewal. And therefore the
14 challenge is beyond the scope of what the Commission
15 has required applicants to do in order to obtain
16 license renewal.

17 CHAIRMAN McDADE: Mr. Sipos, what Mr. Turk
18 has just said is that within the license renewal
19 procedure there's no specific portion of the
20 regulation that required the implementation of SAMAs.
21 There's no specific portion that allows a party to
22 challenge the implementation of the SAMA. He's
23 indicated that under 5109(a)© that there is an
24 alternative avenue. From New York's standpoint, why
25 is he wrong?

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1 MR. SIPOS: Mr. Turk is wrong, Your Honor,
2 and so is Entergy for a variety of reasons. First and
3 foremost, I would cite Your Honors and the parties to
4 10 CFR Section 54.33©. And I'll just read a portion
5 of it.

6 CHAIRMAN McDADE: I'm sorry, excuse me,
7 could you repeat that? 54 point --

8 MR. SIPOS: I'm sorry, Your Honor, I will
9 repeat it. It's 10 CFR Section 54.33© and I believe
10 we've cited it in our papers, but I think it bears
11 some underscoring here given what Entergy and NRC
12 staff are trying to argue. And I'm picking up that
13 regulation halfway through. It says "these
14 conditions" and that's a reference back to the
15 conditions in the previous sentence. It says "These
16 conditions may be supplemented or amended, as
17 necessary, to protect the environment during the term
18 of the renewed license and will be derived from the
19 information contained in the supplement to the
20 Environmental Report submitted pursuant to 10 CFR Part
21 51, as analyzed and evaluated in the NRC record of
22 decision.

23 The conditions will identify the
24 obligations of the licensee in the environmental area,
25 including, as appropriate, requirements for reporting

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1 and record keeping of environmental data and any
2 conditions and monitoring requirements for the
3 protection of the non-aquatic environment."

4 There's clearly a mechanism here to bring
5 in the information from the Environmental Report and
6 the Environmental Impact Statement pertaining to SAMAs
7 and to review it and if they are cost beneficial as
8 the ones we have identified in New York Contention 36
9 are, to implement them.

10 The staff seems to be really trying to
11 have a different decision from that which was reached
12 by the Commissioners in connection with the NEI
13 petition for rulemaking. And it's -- I have to say
14 it's regrettable in the case of Indian Point given the
15 amount of people that are located nearby and when we
16 have SAMAs that clearly are substantially cost
17 beneficial. And for them -- for the NRC staff and for
18 Entergy to say well, that's outside the scope, that
19 runs counter to the Commissioner's decision in the NEI
20 case and it's also counter to the Statement of
21 Considerations back in 1996 for license renewal.

22 And I would just -- we mentioned this and
23 I hate to belabor points that were already mentioned,
24 but if it bears repeating, I guess, and the reference
25 is on page four of our reply. I mean there is a

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1 recognition that there could be a situation in which
2 the SAMA was cost beneficial and that it could be
3 implemented. Maybe Indian Point will be the only
4 facility where the cost benefit analysis works out
5 that way. But that doesn't mean it should be
6 discarded here. It's part of license renewal.

7 License renewal, really going back to what
8 Ms. Sutton said, what is being renewed is not only the
9 pipes or the cables. It's the operation of the entire
10 facility. And the SAMA analysis is a way to analyze
11 through the mitigation or alternative branches of
12 NEPA, are there alternatives that should be considered
13 and if it is cost beneficial, implement it.

14 I mean this is not an instance where the
15 mitigation measures that the State is highlighting are
16 not cost beneficial, where the cost outweighs the
17 benefit. These are clearly -- with 26 -- they're cost
18 beneficial and very clearly so given the re-analysis
19 with the weather data and the other adjustments that
20 were made to the re-analysis.

21 CHAIRMAN McDADE: But isn't what Mr. Turk
22 is saying for the staff is that 54.33 had to do with
23 the continuation of the CLB and the CLB is outside the
24 scope of this proceeding, that if there is a
25 deficiency in the CLB the correct vehicle is through

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1 the backfit procedures under 50.109(a)©, not under the
2 license renewal procedures?

3 MR. SIPOS: Mr. Turk is wrong. Staff is
4 wrong. The State acknowledges and it clearly
5 acknowledges that the Board has ruled -- has made
6 rulings in this case about the CLB. But this is --
7 what it seems that staff is trying to do and it is
8 regrettable in the case of Indian Point where we have
9 cost beneficial mitigation candidates. They're trying
10 to take them out of license renewal and put them in
11 another box. But these questions that were asked by
12 staff in the SAMA analysis, it is part of NEPA. And
13 it seems to be that staff is presenting something of
14 a semantical defense here.

15 Clearly -- or how could a -- how could the
16 Commissioners agree to a permit and bypass an
17 opportunity to mitigate environmental impacts for the
18 people of the New York metropolitan area?

19 CHAIRMAN McDADE: Okay, thank you.

20 Mr. Turk, did I accurately summarize your
21 position?

22 MR. TURK: Part of our position, Your
23 Honor. I was not limiting my self only to
24 environmental impacts where were excessive to CLB
25 states.

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1 The point I was making, perhaps if I have
2 to link it to something I had said earlier is that the
3 environmental impacts for radiological purposes of
4 license renewal have already been determined to be
5 small. That determination was made in the GEIS, in
6 the Generic Environmental Impact Statement, so that
7 even if a SAMA is determined to be found -- is
8 determined to be favorable from a cost beneficial
9 standpoint, the impact is still small.

10 MR. SIPOS: Judge, may I? This is John
11 Sipos. May I respond to that point?

12 CHAIRMAN McDADE: Yes.

13 MR. SIPOS: I think Mr. Bessette and Mr.
14 Turk have both made references to the 1996 Generic
15 Environmental Impact Statement. But in connection
16 with severe accidents, that document or the
17 preparation of that document or there was, I should
18 say, there was a predecessor document, another NUREG.
19 I believe it's 1150, and that document looked at
20 certain facilities around the country. And most
21 notably, it did not look at Indian Point. It did not
22 look at what would be the benefits or what would be
23 the impacts of a severe accident at Indian Point.

24 Indian Point's surrounding population
25 dwarfs that of any other plant. Zion, which was

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1 looked at, I believe, in 1150, and possibly some of
2 the ones in Pennsylvania, they don't come close to
3 Indian Point. It's projected to have 19 million
4 people -- this is by Entergy's own accounts -- 19
5 million people within 50 miles by 2035.

6 So talking about what the GEIS said about
7 Indian Point, excuse me, about severe accidents, it
8 really misses the boat.

9 MR. BESSETTE: Your Honor, this is Paul
10 Bessette. I think Mr. Sipos is trying to exclude IPEC
11 from the scope of the guidance which is clearly
12 inaccurate. And my reference was to the Commission's
13 decision just two weeks ago in Pilgrim where they say
14 because the guidance provides a severe accident impact
15 analysis that envelopes potential impacts of all
16 existing plants.

17 CHAIRMAN McDADE: And I believe they
18 bolded "all".

19 MR. BESSETTE: Yes, Your Honor.

20 MR. SIPOS: And Your Honors, I would also
21 submit that this issue has not been litigated. As the
22 State of New York is trying to do with going back and
23 looking at the historical documents, what is the bases
24 for statements here and there. And it is really
25 regrettable that the language or the rationale of the

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1 Commissioners from 2001 and what they also said in the
2 Statement of Considerations which clearly for the
3 GEIS, if we want to talk about the GEIS which clearly
4 envisioned the possibility of implementing some SAMAs
5 that are cost beneficial, it's really regrettable in
6 this case that that is what is what staff and Entergy
7 wants to do. There's no basis for it.

8 CHAIRMAN McDADE: Mr. Turk, let me just
9 propose one other hypothetical here and just have you
10 address it, if you would. And then have Entergy
11 address it as well.

12 The sort of scenario is that in this
13 particular circumstances of license renewal, where no
14 previous SAMA analysis has been done. It's required
15 that a SAMA analysis be done. But yet, it's the
16 position of the staff that having been done, it's --
17 there's no ability to make use of the SAMA analysis in
18 the context of this license renewal proceeding; that
19 if the SAMA analysis is not based on aging management,
20 although it's required to be done, it's just sort of
21 left out there hanging. It's not part of the license
22 renewal. It can't be part of the license renewal.
23 There's no legal ability for it to be part of the
24 license renewal.

25 Is that logical, having required that it

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1 be done as part of the license renewal, doesn't it
2 follow that you should be able to go to the logical
3 extent that if the SAMA analysis identifies a safety
4 enhancement that's cost effective that it should be,
5 that it need be, implemented as part of the license
6 renewal, if it is so clear that to do otherwise would
7 be arbitrary and capricious, that there is a legal
8 ability to address it?

9 MR. TURK: Your Honor, you have not stated
10 my position. I have not said that SAMAs are not
11 required as part of license renewal.

12 CHAIRMAN McDADE: I wasn't stating your
13 position. I was stating a hypothetical and asking you
14 to respond to it.

15 MR. TURK: Okay. The SAMAs are required
16 to be considered, just like all environmental impacts
17 are required to be considered by NEPA.

18 CHAIRMAN McDADE: But they're not limited
19 to those related to aging management, a full SAMA
20 analysis needs to be done, including those that are
21 related to aging management and otherwise, as part of
22 this license renewal proceeding, correct?

23 MR. TURK: The SAMA analyses are required
24 to be performed and considered. But there is no
25 implementation requirement that comes with that. If

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1 there was any implementation, it would be done not
2 just for license renewal, but for the existing
3 operating license.

4 CHAIRMAN McDADE: But then what does the
5 consideration consist of? You're saying that once
6 you've considered it, once the Commission has
7 considered it, the Commission doesn't have the ability
8 to act on it within the scope of the license renewal.

9 MR. TURK: The Commission has the ability
10 to determine what is necessary for adequate protection
11 of the public health and safety. If they found that
12 there was something that needed to be done to protect
13 public health and safety, they could impose a
14 requirement and they would do that through
15 backfitting.

16 The SAMA analysis is considered to the
17 same extent that all environmental impacts are
18 considered. NEPA requires us to consider the impacts
19 and let me be specific for SAMAs, it requires us to
20 consider the SAMA analyses so that when the Commission
21 makes a decision, it is an informed decision. That is
22 what NEPA requires. The law is very clear that NEPA
23 is not an implementation requirement. It is
24 consideration only. It is important for the
25 Commission to consider the impacts of its potential

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1 actions and that the public be informed about the
2 impacts. And that's what NEPA requires us to do.
3 That's what Congress mandated.

4 Congress did not mandate that any
5 environmental impacts that are found to be great must
6 be addressed and re-addressed. NEPA does not require
7 that.

8 CHAIRMAN McDADE: Mr. Turk, but you're
9 saying that it needs to be an informed decision. But
10 what you're saying is there is no decision for the
11 Commission to make on these SAMAs in the context of a
12 license renewal. It needs to make the decision on
13 license renewal irrespective of a SAMA analysis that
14 if it chooses to do anything, it would then, outside
15 the license renewal, sua sponte, initiate a backfit
16 and if a party were not satisfied with what the
17 Commission did, the remedy is not within this license
18 renewal procedure, but rather in a 2.206 petition.

19 And if that's the case, then why is this
20 SAMA analysis requirement part of the license renewal
21 application?

22 MR. TURK: First of all, your statement as
23 the law is correct. I agree with the way you
24 summarize the way SAMAs are considered and what the
25 Commission does with the SAMA analysis that licensing

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1 will stage.

2 The reason we consider SAMAs during
3 license renewal is because the Third Circuit Court of
4 Appeals in the Limerick decision reached a decision
5 that found that SAMAs had not -- as I recall -- SAMAs
6 had not been adequately considered. So the Commission
7 undertook to make sure that SAMAs are considered as a
8 license renewal stage.

9 But they did not undertake to impose any
10 requirement that SAMAs be implement.

11 ADMIN. JUDGE WARDWELL: But did Part 54
12 exclude the implementation of any SAMA if it wasn't
13 related to aging management anywhere in the
14 regulation?

15 MR. TURK: No.

16 ADMIN. JUDGE WARDWELL: Thank you.

17 MR. TURK: If we consider SAMAs regardless
18 of whether they're aging related or not.

19 ADMIN. JUDGE WARDWELL: But in your -- I
20 guess I set the question wrong. I was wondering
21 whether Part 54 excluded staff from recommending and
22 implementation of a SAMA if it wasn't related to aging
23 management, because I believe that was the basis that
24 you used for not implementing any of these based on
25 the filings that we received here at Indian Point.

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1 MR. TURK: As I understand it, the
2 regulation is silent in terms of requiring the
3 implementation of SAMA.

4 CHAIRMAN McDADE: Before we move on, Mr.
5 Bessette, Mr. O'Neill, Ms. Sutton, do you have
6 anything further on this point?

7 MR. O'NEILL: Your Honor, this is Mr.
8 O'Neill. I would just emphasize that it's our view
9 that NEPA really confers no independent authority on
10 the Commission or the NRC to require implementation of
11 SAMA. I think that stems from the Methow Valley
12 decision where the Court stood quote, unquote NEPA
13 imposed no substantive requirement that mitigation
14 measures actually be taken.

15 And I think the reason the Commission
16 decided to impose this requirement is is at the time
17 that they implemented Parts 51 in 1996, they were able
18 to make a generic determination regarding the impacts
19 of severe accidents, but they weren't at the time able
20 to make a determination regarding possible mitigation
21 measures.

22 And in view of the Limerick decision, I
23 think the Commission felt compelled or obligation to
24 impose this requirement. And again, I would stress
25 that it focuses on an analysis of possible mitigation

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1 measures, reasonably thorough discussion of
2 potentially cost beneficial SAMAs.

3 And again, I would direct the Board,
4 respectfully, to pages 26 to 27 of our answer, where
5 the Commission said the NRC believes that it should
6 continue to consider SAMAs for individual applications
7 to meet its responsibilities under NEPA.

8 And as NEPA requires the NRC to analyze
9 the environmental impacts of its actions and in so
10 doing implicitly requires agencies to consider
11 measures to mitigate those impacts when preparing
12 impact statements.

13 NRC's obligation to consider mitigation
14 exists whether or not mitigation ultimately is found
15 to be cost beneficial and whether or not mitigation
16 ultimately will be implemented by the licensee.

17 So I think in a nutshell, that's our
18 position. I think it's consistent with the NRC
19 staff's.

20 CHAIRMAN McDADE: Okay, thank you.

21 Mr. Sipos, anything further from New York
22 on this point?

23 MR. SIPOS: Yes, Judge. Just going back
24 to the Statement of Considerations, Federal Register
25 61 Federal Register 28481, clearly the discussion in

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1 there about implementation would envision, would
2 foresee the possibility that certain SAMAs, albeit
3 cost beneficial ones, could be implemented.

4 And while there's been discussion about
5 Methow Valley and NEPA as not mandating the
6 implementation of anything specific, clearly NEPA does
7 not constrain that. And if I could address a question
8 from Judge Lathrop about McGuire, there is a line in
9 McGuire, Judge Lathrop, I believe it's at page 10.
10 I'll have to double check that page number, but it is
11 -- "While NEPA does not require agencies to select
12 particular options, it is intended to 'foster both
13 informed decision making and informed public
14 participation, and thus to ensure that the Agency does
15 not act upon any complete information, only to regret
16 its decision after it is too late to correct."

17 And there is also some discussion, I
18 believe, about a 2.206 petition process. And that's
19 not where this proceeding is. First of all, a 2.206
20 petition process has a very limited public
21 participation and even more limited right of review as
22 the Second Circuit's Riverkeeper case would bear out
23 from a few years back.

24 So really this is the venue, Judge McDade.
25 Perhaps getting back to your question or one of your

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1 questions, this is the appropriate venue. The
2 Commission in the Statement of Considerations back in
3 '96 anticipated the possibility of mitigation. The
4 Commission rejected the Part 54 categorical exclusion
5 argument in 2001. And it would be irrational under a
6 NEPA alternatives analysis to completely dismiss and
7 terminate a review of severe accident mitigation
8 alternatives simply because they went to systems --
9 simply because they did not go to systems structures
10 and components that are outside the scope of Part 54,
11 That's where the rationality comes in. That's where
12 the alternatives analysis comes in under NEPA.

13 CHAIRMAN McDADE: Thank you. Mr. Sipos,
14 if I might refer you to page 15 of the staff's
15 response that table --

16 MR. SIPOS: Yes, Judge. I have that in
17 front of me.

18 CHAIRMAN McDADE: Under column 5 and 6,
19 they list the various SAMAs that relate to your
20 Contention 35 and 36. Do you have any disagreement
21 with the information provided on that table?

22 MR. SIPOS: Judge, I know we had some
23 questions about this table when we were preparing our
24 reply. We alluded to that in our reply.

25 Right now, I guess I would like to double

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1 check if there's a specified one you had a question
2 about.

3 CHAIRMAN McDADE: Under column 1, 2, 3, 4,
4 5 -- entitled "New York Contention 35" they put a yes
5 for the additional SAMAs that allegedly you say need
6 further analysis. There are nine of them.

7 MR. SIPOS: Yes, I think nine is the total
8 we had identified in Contention 35. Yes, Your Honor.

9 CHAIRMAN McDADE: Are those the nine that
10 you identified in 35?

11 MR. SIPOS: I believe they are; 9, 21, 22,
12 53, 62, 7, 18, 19, and 53.

13 CHAIRMAN McDADE: Your contention says
14 that these -- you know with the re-analysis showed a
15 higher advantageous cost benefit ratio.

16 MR. SIPOS: Yes, for 35, they had not --
17 they were not cost beneficial in Entergy's initial
18 Environmental Report. They were actually, it's the
19 opposite -- they were -- the costs were higher than
20 the benefits I believe.

21 CHAIRMAN McDADE: Correct. And I believe
22 that was for those and but didn't the staff identify
23 three of those that being IP 09, IP 53, IP 253, I'm
24 sorry. IP 209, IP 253, and IP 353, as being cost
25 beneficial in their SEI -- Draft SEIS. Is that not

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1 correct?

2 MR. SIPOS: I would wish to double check
3 that, but that's what this chart does.

4 CHAIRMAN McDADE: So for the sake of
5 argument, then let's assume this chart is correct and
6 if it's isn't, then fine. What we say now is not
7 correct. But assuming this is correct, why are not
8 your allegations in regards to IP 209, IP 253, and IP
9 353 untimely because couldn't you have raised this
10 when the DEIS came out and not the re-analysis?

11 MR. SIPOS: Well, Judge, when the
12 re-analysis came out, we were able to see the
13 differences between the cost and the benefit. And we
14 initially focused on 21, 22, 62, 718, and 19, and then
15 we also realized that 953 and 53 again were of a
16 similar class. In that initially, by initially, I
17 mean Entergy, from Entergy's filings, they were found
18 to be too expensive. And then the re-analysis which
19 we were focusing on showed them to be beneficial.

20 So we were able to compare the numbers and
21 see that. Very clearly, at that time, you know,
22 starting in December of 2009.

23 CHAIRMAN McDADE: Again, why couldn't you
24 have raised that as part of the DEIS, for those three
25 contentions, three SAMAs, I'm sorry.

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1 MR. SIPOS: Three SAMAs, yes, Your Honor.

2 I think we were --

3 MR. ROISMAN: This is Tony. I'm sorry to
4 interrupt, but since this is an easy answer. I
5 wondered if I could give it to you.

6 MR. SIPOS: Judge, would that be
7 acceptable? Mr. Roisman is out of the office from
8 where I am.

9 CHAIRMAN McDADE: Go ahead.

10 MR. ROISMAN: Judge Wardwell, the three
11 that the staff identified for only cost effective in
12 the uncertainty analysis, not in the baseline
13 analysis, so they were in a different category, and
14 like the other six, there was still more cost
15 effective analysis to be done as to them.

16 We didn't feel and we made this point in
17 Contention 36 that if a SAMA were only cost effective
18 when you did the uncertainty analysis, but not cost
19 effective in the baseline analysis, there was much
20 chance that one could establish that there was a
21 substantial edge and that that should be an
22 implemented SAMA.

23 So that's the difference between those
24 three, and what we found when the 2009 re-analysis was
25 done.

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1 ADMIN. JUDGE WARDWELL: Thank you. Any
2 response to those line of questionings from staff?

3 MR. TURK: Yes, very briefly, Your Honor.
4 First, in response to Mr. Roisman, he's partially
5 correct. Of the three that staff identified in the
6 SEIS, in the SEIS as being cost beneficial, two of
7 them were part of the uncertainty analysis. Those are
8 the IC 221, IC 222. The third one, I believe the
9 staff identified as IC 353, was identified as both the
10 base case and the uncertainty analysis by the
11 Applicants as potentially cost beneficial.

12 But I think that's a minor point. I
13 wanted to make one other point about the table. The
14 data that are represented in the table are drawn from
15 the footnotes that appear at page 14 and if you'll
16 note on that page, 32, it gives you a citation to
17 where in the Environmental Report the Applicant has
18 identified potentially cost beneficial SAMAs of 33
19 identified as the Draft FEIS location, the source for
20 the table, the data on those. And for 035, the re-
21 analysis sources.

22 So if anyone wants to re-examine the
23 source for those data that appear in the table, that's
24 where they are.

25 ADMIN. JUDGE WARDWELL: Thank you.

1 Entergy, any response to that line of questioning in
2 regards to column 5 of table 15?

3 MR. O'NEILL: Yes, Judge Wardwell, this is
4 Mr. O'Neill. I would just emphasize that those
5 particular SAMAs you identified, IP 29, IP 253, and IP
6 353, were actually identified as potentially cost
7 beneficial as early as February 2008. And Entergy's
8 response to a staff RAI. And in that RAI response, we
9 detailed this in our answer, I believe on pages 8 to
10 9, Entergy provided additional analysis case in which
11 the impact to lost tourism and business was analyzed
12 as a baseline analysis and multiplied to account for
13 uncertainties. So they were first identified as
14 potentially cost beneficial. In February 2008, and of
15 course, that was ultimately reflected in the staff's
16 DSEIS.

17 ADMIN. JUDGE WARDWELL: Thank you, Mr.
18 O'Neill.

19 Mr. Sipos, back to the table, column 6,
20 dealing with New York Contention 36. Unfortunately,
21 this table identifies 9 SAMAs also, but a different 9.
22 So we won't be able to use the numbers, depending on
23 which ones we're talking about.

24 But as I understand this table now and you
25 can correct me if I'm wrong, these were the

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1 contentions that you felt where the re-analysis became
2 so cost beneficial that they warrant them to be
3 implemented as a license condition. Is that correct?

4 MR. SIPOS: Yes, Judge Wardwell, the SAMA
5 candidates, not the contentions, but the SAMA
6 candidates --

7 ADMIN. JUDGE WARDWELL: Every time I say
8 a C word, just assume I mean something different, the
9 contentions, because I probably call it a contention.

10 MR. SIPOS: The nine SAMA candidates that
11 we -- that the State of New York specifically
12 identified in Contention 36, became quite -- became
13 substantially most cost effective.

14 ADMIN. JUDGE WARDWELL: What criteria did
15 you use to, you know, kick you over? Was there a
16 threshold, ratio or something that says oh, now it's
17 way too cost effective to be ignored?

18 MR. SIPOS: I do not believe there was a
19 specific mathematical ratio that we used and we may
20 have not necessarily captured all of the candidates in
21 Contention 36 that had an increase to cost, had an
22 increase in their effectiveness that made them
23 substantially more cost beneficial.

24 ADMIN. JUDGE WARDWELL: But if your
25 recollection that the number was a lot more

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1 advantageous with the re-analysis than it was with the
2 finding that the SEIS made in the draft?

3 MR. SIPOS: Yes, I believe so, Your Honor.

4 ADMIN. JUDGE WARDWELL: Mr. Turk, would
5 you like to respond to that question?

6 MR. TURK: I'm sorry, Your Honor, which
7 question.

8 ADMIN. JUDGE WARDWELL: Any of the line of
9 questioning dealing with New York State 36 and the
10 responses that New York State provided.

11 MR. TURK: The only thing I would note,
12 Your Honor, is that I'm not aware that New York did
13 any analysis to reach a position on potential cost
14 beneficial SAMAs. I believe they were just looking at
15 what the Applicant did and then just flagged the
16 Applicant's SAMAs of either being appropriate for
17 column 5 or column 6.

18 ADMIN. JUDGE WARDWELL: If that's true, my
19 question was towards them was what did they use that
20 allowed them to flag certain ones as being candidates
21 for support of New York State 36?

22 MR. SIPOS: And my answer is I really have
23 no idea, Your Honor. We did not see any quantitative
24 challenge in the contentions. There is absolutely
25 nothing in what the State filed that would say that

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1 there is some defect in the Applicant's analysis that
2 some quantitative factor should be give more weight or
3 that some factor was excluded. There's no challenge
4 at all to the analysis at all. It's simply a legal
5 conclusion. What should the Applicant do now that
6 it's done these analyses? And that goes to both
7 Contentions 35 and 36.

8 ADMIN. JUDGE WARDWELL: I understand that.
9 My line of questioning was to determine what rationale
10 they used for indicating that the change in the
11 results of the analysis warranted these potential
12 SAMAs to be part of 36. And that's what I was trying
13 to see if I could get better understanding of.

14 MR. TURK: Your Honor, we could find no
15 rational basis in the contention.

16 ADMIN. JUDGE WARDWELL: I'm sorry, I
17 interrupted you. Go ahead.

18 MR. TURK: I'm sorry. I said we could
19 find no rational basis of the contentions that could
20 explain that.

21 ADMIN. JUDGE WARDWELL: Thank you.
22 Entergy. Do you have any response?

23 MR. BESSETTE: Your Honor, this is Paul
24 Bessette. We're not aware of any criteria or
25 rationale they used. Similar to Mr. Turk, we believe

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1 the arguments are more legal and generic that should
2 have been made two years ago, and that's just saying
3 well, now it's really big. It's just not a real
4 sufficient basis for a contention.

5 ADMIN. JUDGE WARDWELL: Mr. Turk, doesn't
6 the relative benefit play into any decision you might
7 reach? Let's say, for instance, there was a SAMA that
8 had -- that dealt with -- let's say we had two SAMAs
9 that dealt with aging management at a hypothetical
10 site and that one was just marginally cost beneficial,
11 but the other one was had an obvious several orders or
12 magnitude benefit associated with it compared to the
13 cost. Does not that weigh into which ones you might
14 or might not implement as a license condition?

15 MR. TURK: Hypothetically, if a contention
16 addressed an aging related SAMA and of course, we
17 don't have one like that here, but hypothetically,
18 once the staff considered that SAMA, they would have
19 to determine that there was a substantial benefit. I
20 forget the exact words of the regulation. But they
21 would then go to see whether or not they could reach
22 their adequacy determination under Part 54. Adequacy
23 of the AMP.

24 If you could hold just one second, Your
25 Honor.

1 (Pause.)

2 The criteria that I was thinking of was
3 the use of the word substantial, the backfit criteria
4 under 50.109. But if a SAMA related to an aging-
5 related element of license renewal, if it was only
6 marginally cost beneficial, then I would think it
7 would change our adequacy determination under Part 54.
8 But if there was something that was significantly cost
9 beneficial from a favorable standpoint, we would then
10 examine whether or not the AMP was adequate under Part
11 54, because that might affect a determination whether
12 the AMP was itself adequate. And that's how we would
13 consider it.

14 ADMIN. JUDGE WARDWELL: Thank you.

15 MR. SIPOS: Judge Wardwell, this is John
16 Sipos, again. We did try to depict some of these
17 comparisons in a chart that accompanied the Contention
18 36. And I believe it's at page 49 and 48 of the March
19 11 submission.

20 Because they're charts, we actually lost,
21 I think, the page numbers on the bottom, but it
22 follows on page 47.

23 ADMIN. JUDGE WARDWELL: But as I look at
24 that, that's merely a chart of the figures for the
25 various nine SAMAs, but doesn't really say how you

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1 ended up selecting only those nine for that particular
2 chart or what criteria you used, to say ooh, this too
3 big a job or too small a job, etcetera.

4 MR. SIPOS: As I said before, we may not
5 have been -- covered the entire universe here, but we
6 did try to provide this comparison to show the
7 differences.

8 I think it was staff, but Entergy
9 criticized New York for not including one or more --
10 there I go -- one or more SAMA candidates, I believe,
11 within the contention. And State is not aware of any
12 NRC proceeding or decision that says because you
13 missed one SAMA in your contention, you can't go
14 forward with a contention regarding other SAMAs.

15 ADMIN. JUDGE WARDWELL: Thank you.

16 MR. O'NEILL: Your Honor, this is Mr.
17 O'Neill.

18 Mr. Sipos is referring to pages 23 and 24
19 of our answer where we point out the example that
20 dedicated gagging divide for steam generated tube
21 rupture events where Entergy identified these
22 particular SAMAs. They actually are numbered SAMAs,
23 but they're identified as potentially cost beneficial
24 in a May 2008 RAI response. They were discussed in
25 the DSEIS and in that case the estimated benefits were

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1 in order of \$1 million to \$3.5 million and the
2 implementation cost was about \$50,000. So again, a
3 very significant difference there.

4 And that one was not one that was
5 highlighted by New York.

6 CHAIRMAN McDADE: Thank you, Mr. O'Neill.

7 Okay, I'm going to put the mute button on for a
8 second and we will be back with you in just a couple
9 of moments.

10 (Whereupon, the above-entitled matter went
11 off the record at 3:28 p.m. and resumed at 3:29 p.m.)

12 CHAIRMAN McDADE: This is Judge McDade,
13 back on the line. We don't have any further
14 questions. Before we terminate this status
15 conference, we just sort of go through from the NRC
16 staff standpoint, is there anything further that you
17 believe we should discuss at this status conference
18 before we recess?

19 MR. TURK: I don't believe so, Your Honor.

20 CHAIRMAN McDADE: From the standpoint of
21 Entergy?

22 MR. BESSETTE: No, Your Honor. We have
23 nothing further.

24 CHAIRMAN McDADE: New York?

25 MR. SIPOS: Yes, Judge. This is John

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1 Sipos. Just following up on a response or colloquy I
2 was having with Judge Wardwell, I would also note that
3 in the accompanying statement of David Cannon, there
4 were also some charts that compared the differences in
5 various parts of the -- or various results of the SAMA
6 analysis between the 2007 and the 2009 SAMA analysis
7 that the Applicant provided. And I believe the issue
8 about the uncertainty of -- the difference between
9 baseline and -- baseline -- preventative with
10 uncertainty, we also covered in paragraph 24 at least.
11 And may have done so elsewhere, our Contention No. 36.
12 That's t for the State of New York.

13 CHAIRMAN McDADE: Thank you. From
14 Riverkeeper?

15 MS. BRANCATO: Hi, this is Brenda
16 Brancato. I was just wondering in light of the recent
17 decision by the New York State of Environmental
18 Conservation to deny 401 water quality specification
19 which is necessary in order for 18.2 continuing
20 operating for license units 2 and 3B, renewed. I was
21 just wondering if the Board or the NRC staff could
22 speak to the impact of that decision, if any, on the
23 ongoing proceedings that we are all in the midst of?

24 CHAIRMAN McDADE: The answer is the Board
25 can't. Whether or not the NRC staff -- you can give

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1 the NRC staff a call and speak with them.

2 MS. BRANCATO: Okay. Nothing besides
3 that, Your Honor. Thank you.

4 CHAIRMAN McDADE: From Clearwater?

5 MS. GREENE: We're fine with completing
6 the call.

7 CHAIRMAN McDADE: Okay, Connecticut.

8 MR. SNOOK: Connecticut is also ready to
9 complete the call.

10 CHAIRMAN McDADE: Connecticut sounded like
11 it's more than ready.

12 (Laughter.)

13 CHAIRMAN McDADE: Town of Cortlandt?

14 MS. STEINBERG: Town of Cortlandt has
15 nothing further, Your Honor.

16 SPEC. AGENT HANNAN: Okay, did
17 Westchester, Buchanan, or the New York City Economic
18 Development Corporation come on the line during the
19 course of the proceeding?

20 (No response.)

21 Apparently not. We will terminate the
22 status conference and we will expect to hear from you
23 all by May 4th. Thank you.

24 (Whereupon, at 3:32 p.m., the
25 teleconference was concluded.)

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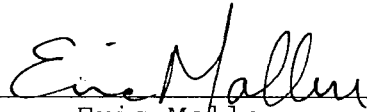
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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Entergy Nuclear
 Indian Point, Units 2&3

Name of Proceeding: Pre-Hearing Conference
Docket Number: 50-247-LR, 50-286-LR
ASLBP Number: 07-858-03-LR-BD01
Location: (telephone conference)

were held as herein appears, and that this is the
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